

Exhibit D

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
11 CIV 0691(LAK)

-----x

CHEVRON CORPORATION,

Plaintiff,

- against -

STEVEN DONZIGER, et al.,

Defendants.

-----x

June 6, 2013

9:13 a.m.

Videotaped Deposition of JOSEPH
KOHN, taken by Plaintiff, pursuant to
Subpoena, held at the offices of Gibson
Dunn & Crutcher LLP, 200 Park Avenue, New
York, New York, before Todd DeSimone, a
Registered Professional Reporter and
Notary Public of the State of New York.

<p>2</p> <p>1 APPEARANCES:</p> <p>2 GIBSON, DUNN & CRUTCHER LLP</p> <p>3 200 Park Avenue</p> <p>4 New York, New York 10166</p> <p>5 Attorneys for Plaintiff</p> <p>6 BY: ANDREA E. NEUMAN, ESQ.</p> <p>7 aneuman@gibsondunn.com</p> <p>8 - and -</p> <p>9 GIBSON DUNN & CRUTCHER LLP</p> <p>10 1801 California Street</p> <p>11 Denver, Colorado 80202-2642</p> <p>12 Attorneys for Plaintiff</p> <p>13 BY: JASON B. STAVERS, ESQ.</p> <p>14 jstavers@gibsondunn.com</p> <p>15</p> <p>16 GOMEZ LLC</p> <p>17 111 Quimby Street</p> <p>18 Suite 8</p> <p>19 Westfield, New Jersey 07090</p> <p>20 Attorneys for Defendants Javier</p> <p>21 Piaguaje Payaguaje and Hugo Gerardo</p> <p>22 Camacho Naranjo</p> <p>23 BY: JULIO C. GOMEZ, ESQ.</p> <p>24</p> <p>25</p>	<p>4</p> <p>1 J. KOHN</p> <p>2 THE VIDEOGRAPHER: We are now</p> <p>3 on the record. Please note that the</p> <p>4 microphones are sensitive and may pick up</p> <p>5 whispering and private conversations.</p> <p>6 Please turn off all cell phones or place</p> <p>7 them away from the microphones, as they</p> <p>8 can interfere with the deposition audio.</p> <p>9 Recording will continue until all parties</p> <p>10 agree to go off the record.</p> <p>11 My name is Brent Wells</p> <p>12 representing Veritext New York. The date</p> <p>13 today is June 6th, 2013 and the time is</p> <p>14 approximately 9:13 a.m.</p> <p>15 This deposition is being held</p> <p>16 at Gibson Dunn, located at 200 Park</p> <p>17 Avenue, New York, New York. The caption</p> <p>18 of this case is Chevron Corporation versus</p> <p>19 Steven Donziger, et al. This case is</p> <p>20 filed in the United States District Court,</p> <p>21 Southern District of New York, case number</p> <p>22 11 CIV 069(LAK). The name of the witness</p> <p>23 is Joseph Kohn.</p> <p>24 At this time the attorneys</p> <p>25 present in the room will identify</p>
<p>3</p> <p>1 APPEARANCES: (Continued)</p> <p>2</p> <p>3 CONRAD O'BRIEN, P.C.</p> <p>4 1500 Market Street</p> <p>5 Centre Square</p> <p>6 West Tower, Suite 3900</p> <p>7 Philadelphia, Pennsylvania 19102-2100</p> <p>8 Attorneys for The Witness</p> <p>9 BY: PATRICIA M. HAMILL, ESQ.</p> <p>10 phamill@conradobrien.com</p> <p>11 JOSHUA J. VOSS, ESQ.</p> <p>12 jvoss@conradobrien.com</p> <p>13</p> <p>14 ALSO PRESENT:</p> <p>15 MAX GITTER, ESQ. Special Master</p> <p>16 JUSTIN ORMAND, ESQ., Assistant to the</p> <p>17 Special Master</p> <p>18 BRENT WELLS, Videographer</p> <p>19</p> <p>20 JOSE LUIS MARTIN, ESQ., Chevron</p> <p>21 Corporation</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>5</p> <p>1 J. KOHN</p> <p>2 themselves and the parties they represent</p> <p>3 after which our court reporter, Todd</p> <p>4 DeSimone, representing Veritext, will</p> <p>5 swear in the witness and we can proceed.</p> <p>6 MS. NEUMAN: Andrea Neuman,</p> <p>7 Gibson Dunn, on behalf of Chevron</p> <p>8 Corporation.</p> <p>9 MR. STAVERS: Jason Stavers,</p> <p>10 Gibson Dunn, on behalf of Chevron</p> <p>11 Corporation.</p> <p>12 MR. MARTIN: Jose Martin from</p> <p>13 Chevron Corporation.</p> <p>14 THE SPECIAL MASTER: Max</p> <p>15 Gitter, the Special Master. Seated to my</p> <p>16 right is my assistant, Justin Ormand.</p> <p>17 MR. GOMEZ: Julio Gomez, Gomez</p> <p>18 LLC, on behalf of defendants Hugo Camacho</p> <p>19 and Javier Piaguaje.</p> <p>20 Mr. Donziger has asked me to</p> <p>21 express that he has had to prioritize</p> <p>22 other work in this case today and could</p> <p>23 not be here at this time, but he reserves</p> <p>24 the right to appear later in the day.</p> <p>25 MS. HAMILL: Patricia Hamill</p>

2 (Pages 2 to 5)

<p style="text-align: right;">6</p> <p>1 J. KOHN 2 and Joshua Voss for third-party deponent 3 Mr. Joseph Kohn. 4 * * * 5 J O S E P H K O H N, 6 called as a witness, having been first 7 duly sworn, was examined and testified 8 as follows: 9 EXAMINATION BY MS. NEUMAN: 10 Q. Good morning, Mr. Kohn. 11 A. Good morning. 12 Q. Could you state your full name 13 for the record. 14 A. Yes, it is Joseph C. Kohn. 15 MS. HAMILL: Ms. Neuman, may I 16 make a statement on the record before we 17 begin? 18 MS. NEUMAN: Yeah, I'm sorry. 19 MS. HAMILL: I just wanted to 20 make it clear that Mr. Kohn is here today 21 pursuant to a subpoena served on him by 22 plaintiff Chevron Corporation. Mr. Kohn 23 is an attorney who formerly represented a 24 group of Ecuadorian individuals identified 25 in this matter as the Lago Agrio</p>	<p style="text-align: right;">8</p> <p>1 J. KOHN 2 A. In Bryn Mawr, Pennsylvania. 3 Q. What is your current 4 occupation? 5 A. I am a lawyer. 6 Q. And what is your current work 7 address? 8 A. It is 1 South Broad Street, 9 Philadelphia, Pennsylvania, 19107. 10 Q. And you have mentioned you are 11 a lawyer. I assume you are familiar with 12 the conduct of a deposition? 13 A. Yes, I am, as a general matter. 14 I'm not familiar with every stipulation or 15 ruling that may have occurred in this 16 matter, but as a general proposition, yes. 17 Q. In terms of any of the basic 18 rules, like us not talking over one 19 another, you not guessing, do I need to go 20 over those with you? 21 A. I don't believe so. 22 Q. Okay. Is there anything that 23 interferes with your ability to give 24 truthful testimony today? 25 A. No, ma'am.</p>
<p style="text-align: right;">7</p> <p>1 J. KOHN 2 plaintiffs. 3 With his testimony today, 4 Mr. Kohn does not intend to and will not 5 invoke privilege on behalf of his former 6 clients; instead, it is his expectation 7 and understanding that current counsel, 8 Mr. Gomez, for the Lago Agrio plaintiffs, 9 will lodge any privilege objections he 10 deems appropriate. 11 If no objection is made by 12 Mr. Gomez, Mr. Kohn will assume that no 13 privilege is at issue and will respond to 14 the question posed. If Mr. Gomez does 15 raise a privilege objection, Mr. Kohn will 16 await Special Master Gitter's ruling on 17 the objection and will be guided by that 18 ruling as to whether to proceed or not 19 with an answer to the question posed. 20 MR. GOMEZ: I concur. 21 THE SPECIAL MASTER: Thank you. 22 Q. Mr. Kohn, what is your date of 23 birth? 24 A. July 15th, 1957. 25 Q. Where were you born?</p>	<p style="text-align: right;">9</p> <p>1 J. KOHN 2 Q. Anything that would interfere 3 with your memory today? 4 A. No. 5 MS. NEUMAN: I'm going to mark 6 as Exhibit 4001 a subpoena dated June 7 6th -- I'm sorry, a subpoena commanding 8 your appearance at this deposition dated 9 May 31st, 2013. The deposition date being 10 June 6th, 2013 at 9 a.m. 11 (Plaintiff's Exhibit 4001 12 marked for identification.) 13 Q. Your counsel mentioned in her 14 opening remarks, Mr. Kohn, that you are 15 appearing here pursuant to subpoena. Is 16 this a subpoena that you are appearing 17 pursuant to? 18 A. Yes, it is. 19 Q. A couple of questions about the 20 way documents are maintained at Kohn Swift 21 & Graf. 22 You are currently with the firm 23 of Kohn Swift & Graf? 24 A. Yes. 25 Q. The documents that you produced</p>

3 (Pages 6 to 9)

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<p style="text-align: right;">10</p> <p>1 J. KOHN</p> <p>2 in this matter, did they come from the</p> <p>3 files of Kohn Swift & Graf?</p> <p>4 A. Yes.</p> <p>5 Q. In the ordinary course of the</p> <p>6 business of Kohn Swift & Graf, do you</p> <p>7 regularly communicate by e-mail within the</p> <p>8 firm?</p> <p>9 A. I would say yes, e-mail is</p> <p>10 regularly used, but it is not by any means</p> <p>11 the sole or principal method of</p> <p>12 communication. We are a much smaller firm</p> <p>13 than Gibson Dunn. We are all in one</p> <p>14 building on one floor, so it is very easy</p> <p>15 to simply walk next door to the office or</p> <p>16 pick up a phone.</p> <p>17 But e-mail communication is</p> <p>18 certainly part, since e-mail has become</p> <p>19 prevalent.</p> <p>20 Q. You and the other lawyers at</p> <p>21 your firm use e-mail at times to</p> <p>22 communicate with one another and</p> <p>23 communicate with co-counsel that's in</p> <p>24 another office, that sort of thing; is</p> <p>25 that right?</p>	<p style="text-align: right;">12</p> <p>1 J. KOHN</p> <p>2 A. Yes.</p> <p>3 Q. Were you involved in the</p> <p>4 identification, collection and production</p> <p>5 of documents in response to Chevron's</p> <p>6 subpoena?</p> <p>7 A. I was involved in it, yes.</p> <p>8 Q. And to your knowledge, were the</p> <p>9 documents produced located in Kohn Swift &</p> <p>10 Graf's files?</p> <p>11 A. Do you mean -- to my knowledge,</p> <p>12 all the documents that were requested were</p> <p>13 produced and we only produced documents</p> <p>14 from Kohn Swift & Graf files.</p> <p>15 Q. From your business files?</p> <p>16 A. Correct.</p> <p>17 Q. And you Bates stamped those</p> <p>18 documents with a KSG prefix?</p> <p>19 A. It was handled by our counsel,</p> <p>20 the Conrad O'Brien firm, and certain</p> <p>21 outside vendors who worked on that</p> <p>22 project.</p> <p>23 MS. HAMILL: And we did use KSG</p> <p>24 as a prefix for the production documents.</p> <p>25 Q. Do you have any reason to</p>
<p style="text-align: right;">11</p> <p>1 J. KOHN</p> <p>2 A. Yes, absolutely.</p> <p>3 Q. And that has been true since</p> <p>4 2003?</p> <p>5 A. Yes.</p> <p>6 Q. Does your firm maintain e-mail</p> <p>7 records in a central managed computer</p> <p>8 system of some kind?</p> <p>9 A. Yes.</p> <p>10 Q. And that has been true since</p> <p>11 2003?</p> <p>12 A. Yes.</p> <p>13 Q. And did Kohn Swift & Graf</p> <p>14 maintain both electronic and hard copy</p> <p>15 documents related to the Ecuador</p> <p>16 litigation?</p> <p>17 A. There were both electronic and</p> <p>18 hard copy documents, yes.</p> <p>19 Q. Does Kohn Swift & Graf keep</p> <p>20 regular accounting records of its costs</p> <p>21 and expenditures in the ordinary course of</p> <p>22 its litigation matters?</p> <p>23 A. Yes, it does.</p> <p>24 Q. Are these accounting records</p> <p>25 maintained in a centralized manner?</p>	<p style="text-align: right;">13</p> <p>1 J. KOHN</p> <p>2 believe that any of the documents produced</p> <p>3 in response to Chevron's subpoena are not</p> <p>4 what they appear to be, in other words, if</p> <p>5 you produced an e-mail that purports to be</p> <p>6 from you to someone else on a certain</p> <p>7 date, do you have any reason to believe</p> <p>8 that's not what that document is?</p> <p>9 A. No, I don't.</p> <p>10 MS. NEUMAN: I'm going to have</p> <p>11 marked as Exhibit 4002 Exhibit A to the</p> <p>12 protective order in this matter.</p> <p>13 (Plaintiff's Exhibit 4002</p> <p>14 marked for identification.)</p> <p>15 Q. Mr. Kohn, before coming here</p> <p>16 today, did you read the protective order</p> <p>17 in this matter?</p> <p>18 A. Yes, I did.</p> <p>19 Q. And is that your signature that</p> <p>20 appears on Exhibit 4002 agreeing to be</p> <p>21 bound by the protective order?</p> <p>22 A. Yes, it is.</p> <p>23 Q. And you do agree to be bound by</p> <p>24 that order, sir?</p> <p>25 A. Yes, I do.</p>

4 (Pages 10 to 13)

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<p style="text-align: right;">14</p> <p>1 J. KOHN</p> <p>2 Q. You graduated from the</p> <p>3 University of Pennsylvania in 1979?</p> <p>4 A. Correct.</p> <p>5 Q. What law school did you attend?</p> <p>6 A. Villanova University.</p> <p>7 Q. When did you graduate?</p> <p>8 A. 1982.</p> <p>9 Q. Since graduating, have you</p> <p>10 worked with Kohn Swift & Graf?</p> <p>11 A. I have, although the firm name</p> <p>12 has changed over time, but it has been one</p> <p>13 continuous firm.</p> <p>14 Q. And the Kohn in Kohn Swift &</p> <p>15 Graf, is that you or your father or</p> <p>16 someone else?</p> <p>17 A. That is my father, Harold Kohn.</p> <p>18 Q. The firm, although the name has</p> <p>19 changed, was started in 1969?</p> <p>20 A. Yes.</p> <p>21 Q. Are you a former candidate for</p> <p>22 Pennsylvania Attorney General?</p> <p>23 A. I am indeed.</p> <p>24 Q. Is one of your primary areas of</p> <p>25 expertise class actions?</p>	<p style="text-align: right;">16</p> <p>1 J. KOHN</p> <p>2 experience with environmental either</p> <p>3 multi-party or class action matters?</p> <p>4 A. Yes.</p> <p>5 Q. Did you have any such</p> <p>6 experience related to the petroleum</p> <p>7 industry?</p> <p>8 A. I don't recall any.</p> <p>9 Q. Not that you recall?</p> <p>10 A. Specifically to the petroleum</p> <p>11 industry, I don't recall.</p> <p>12 Q. And when I say petroleum</p> <p>13 industry, you understand me to be covering</p> <p>14 oil and gas?</p> <p>15 A. Right.</p> <p>16 Q. I will hand you a document that</p> <p>17 was previously marked as Exhibit 3607.</p> <p>18 This is a copy of the Lago</p> <p>19 Agrio complaint that was filed in May of</p> <p>20 2003. The first half of the document is</p> <p>21 in Spanish, and then attached to the</p> <p>22 Spanish is an English translation. And to</p> <p>23 the extent we have documents that are</p> <p>24 Spanish originals throughout the day, that</p> <p>25 should be the pattern.</p>
<p style="text-align: right;">15</p> <p>1 J. KOHN</p> <p>2 A. Yes, I would say so.</p> <p>3 Q. What would you say your other</p> <p>4 primary areas of expertise are as a</p> <p>5 lawyer?</p> <p>6 A. Business and commercial</p> <p>7 litigation, antitrust, securities</p> <p>8 litigation, consumer-related litigation,</p> <p>9 and the firm also has done a certain</p> <p>10 amount of environmental, mass tort</p> <p>11 litigation. I have done some of that.</p> <p>12 And more recently,</p> <p>13 international human rights cases,</p> <p>14 particularly the Holocaust-era cases.</p> <p>15 Q. Your firm has been lead counsel</p> <p>16 in environmental class actions?</p> <p>17 A. We have been lead counsel in</p> <p>18 environmental and toxic tort cases, yes, I</p> <p>19 suppose some were class actions, some were</p> <p>20 simply multi-party cases. More recently</p> <p>21 multi-party than class cases.</p> <p>22 Q. Based on the individualized</p> <p>23 injury issues primarily?</p> <p>24 A. Yes.</p> <p>25 Q. Prior to 2003, did you have</p>	<p style="text-align: right;">17</p> <p>1 J. KOHN</p> <p>2 MS. HAMILL: And they have been</p> <p>3 translated by Chevron?</p> <p>4 MS. NEUMAN: Certified</p> <p>5 translations. Generally speaking, the</p> <p>6 certification is included in the front of</p> <p>7 the exhibit, although I don't see it</p> <p>8 attached to Exhibit 3607, but they are all</p> <p>9 certified translations, not internal</p> <p>10 translations and not done by Chevron</p> <p>11 personnel.</p> <p>12 Q. Have you seen Exhibit 3607</p> <p>13 before, Mr. Kohn?</p> <p>14 A. I believe -- I did see the</p> <p>15 complaint that was filed. I haven't seen</p> <p>16 it in this form with the exhibit number on</p> <p>17 it, but I have seen the complaint.</p> <p>18 Q. And you are aware that an \$18</p> <p>19 billion judgment has been issued on this</p> <p>20 complaint?</p> <p>21 A. Yes.</p> <p>22 Q. Do you or your firm, Kohn Swift</p> <p>23 & Graf, have any economic interest in that</p> <p>24 judgment currently?</p> <p>25 A. No, we do not.</p>

5 (Pages 14 to 17)

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<p style="text-align: right;">18</p> <p>1 J. KOHN</p> <p>2 Q. Have you disavowed any economic</p> <p>3 interest in the Lago Agrio judgment?</p> <p>4 A. Yes, we have.</p> <p>5 Q. When did you do that?</p> <p>6 A. In the fall or winter of 2010,</p> <p>7 I think the firm made it clear that we had</p> <p>8 no interest in any potential attorneys'</p> <p>9 fee that might ever be obtained or awarded</p> <p>10 in the matter.</p> <p>11 The firm also had out-of-pocket</p> <p>12 costs, expenses, related to the matter,</p> <p>13 and the end of last year the firm</p> <p>14 determined that we would not -- or we</p> <p>15 would formally disavow and waive any such</p> <p>16 claim for any cost reimbursement.</p> <p>17 Q. In what form did the cost</p> <p>18 waiver you have just referred to take</p> <p>19 place?</p> <p>20 A. Well, the firm decided to write</p> <p>21 it off, if you will, and we did follow up</p> <p>22 with a letter to the plaintiff groups who</p> <p>23 had originally retained the firm simply</p> <p>24 confirming that fact.</p> <p>25 Q. Do you know the approximate</p>	<p style="text-align: right;">20</p> <p>1 J. KOHN</p> <p>2 Q. Who were the other U.S. counsel</p> <p>3 at that time?</p> <p>4 A. Mr. Bonifaz, Cristobal Bonifaz</p> <p>5 and his firm.</p> <p>6 Q. What was the name of</p> <p>7 Mr. Bonifaz's firm in 2003?</p> <p>8 A. I believe it was something to</p> <p>9 the effect of Law Offices of Cristobal</p> <p>10 Bonifaz or Bonifaz & Associates, something</p> <p>11 to that effect.</p> <p>12 Q. Was Mr. Donziger also U.S.</p> <p>13 counsel in 2003?</p> <p>14 A. I don't recall specifically.</p> <p>15 There were periods of time when</p> <p>16 Mr. Donziger would appear on papers as a</p> <p>17 member of the Bonifaz firm, or around the</p> <p>18 signature block, if you will, with the</p> <p>19 Bonifaz firm. There were other times when</p> <p>20 he would appear simply as his own attorney</p> <p>21 or own proprietorship or firm.</p> <p>22 So I can't be specific in 2003</p> <p>23 which area it was, but he was involved in</p> <p>24 that time frame in the case.</p> <p>25 Q. Mr. Donziger was a lawyer</p>
<p style="text-align: right;">19</p> <p>1 J. KOHN</p> <p>2 date of that letter?</p> <p>3 A. I believe it was sent in March</p> <p>4 of this year.</p> <p>5 Q. 2013?</p> <p>6 A. Yes.</p> <p>7 Q. Have you or your firm had any</p> <p>8 other communications with the plaintiff</p> <p>9 group in 2013?</p> <p>10 A. No.</p> <p>11 Q. Have you had any other</p> <p>12 communications with the plaintiff group in</p> <p>13 2011 or 2012?</p> <p>14 A. No.</p> <p>15 THE SPECIAL MASTER: Excuse me,</p> <p>16 Mr. Kohn, did your letter to the plaintiff</p> <p>17 group in March of this year state a reason</p> <p>18 for the disavowal?</p> <p>19 THE WITNESS: No, sir.</p> <p>20 Q. In 2003 when Exhibit 3607 was</p> <p>21 originally filed in Ecuador, Kohn Swift &</p> <p>22 Graf was U.S. counsel for the plaintiffs,</p> <p>23 correct?</p> <p>24 A. We were one of the U.S.</p> <p>25 counsel, yes.</p>	<p style="text-align: right;">21</p> <p>1 J. KOHN</p> <p>2 working on the case in 2003 under some</p> <p>3 auspice?</p> <p>4 A. I believe so, yes. There were</p> <p>5 periods of time prior to the trial getting</p> <p>6 geared up in Ecuador when Mr. Donziger was</p> <p>7 sort of in for periods and sort of out for</p> <p>8 periods, primarily in the '90s when the</p> <p>9 matter was in New York.</p> <p>10 Q. I'm going to distinguish</p> <p>11 between the Aguinda case in New York with</p> <p>12 the 86 plaintiffs and this case in Ecuador</p> <p>13 in 2003 with the 48 somewhat different</p> <p>14 plaintiff group.</p> <p>15 A. Okay.</p> <p>16 Q. So when I'm referring to the</p> <p>17 complaint, I'm only referring to the 2003</p> <p>18 complaint. Does that make sense?</p> <p>19 A. I understand, yes. Obviously</p> <p>20 trying to give the reason why I couldn't</p> <p>21 be 100 percent clear on 2003 specifically</p> <p>22 as to whether Donziger was there at that</p> <p>23 moment.</p> <p>24 Q. Understood. Were you</p> <p>25 personally involved in developing the</p>

6 (Pages 18 to 21)

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<p style="text-align: right;">22</p> <p>1 J. KOHN</p> <p>2 legal strategy for the complaint filed in</p> <p>3 2003?</p> <p>4 A. I had a very minor role in</p> <p>5 that. It was primarily Alberto Wray, the</p> <p>6 Ecuadorian lawyer, who crafted the</p> <p>7 strategy. I would say Mr. Bonifaz was in</p> <p>8 a secondary position relative to Dr. Wray</p> <p>9 and I was the last person with some</p> <p>10 comments.</p> <p>11 Q. Do you speak any Spanish?</p> <p>12 A. I do not.</p> <p>13 Q. Can you read Spanish?</p> <p>14 A. No.</p> <p>15 Q. Do you speak any languages</p> <p>16 other than English?</p> <p>17 A. No. Many, many years of French</p> <p>18 and I'm not very good.</p> <p>19 Q. I can relate to that</p> <p>20 particularly.</p> <p>21 Did you ever see an English</p> <p>22 translation of Exhibit 3607 before it was</p> <p>23 filed?</p> <p>24 A. I cannot be sure. I certainly</p> <p>25 saw an English translation at or about the</p>	<p style="text-align: right;">24</p> <p>1 J. KOHN</p> <p>2 Jonathan Marks which took place in</p> <p>3 November of 2007.</p> <p>4 Q. When you referred to the</p> <p>5 plaintiffs, do you mean the 48 individual</p> <p>6 plaintiffs?</p> <p>7 A. No, I'm referring to some</p> <p>8 subset of the 48 and/or Mr. Yanza and</p> <p>9 other individuals who were the leadership</p> <p>10 of the plaintiff organizations and the</p> <p>11 community organizations that were affected</p> <p>12 by the -- or lived in the area where the</p> <p>13 oil exploration had occurred.</p> <p>14 Q. Who by name participated in the</p> <p>15 September 2007 meetings?</p> <p>16 A. I remember Mr. Fajardo in</p> <p>17 there. I remember Mr. Yanza. I remember</p> <p>18 I believe it was Mr. Saenz, we referred to</p> <p>19 him as Juampa was his nickname.</p> <p>20 Q. Saenz, Juan Pablo Saenz?</p> <p>21 A. Yes, I believe that's who, that</p> <p>22 he was there. I believe Humberto Piaguaje</p> <p>23 was present for certain discussions.</p> <p>24 There were several other</p> <p>25 individuals who worked at the office of</p>
<p style="text-align: right;">23</p> <p>1 J. KOHN</p> <p>2 time it was filed. It may have been</p> <p>3 shortly before or shortly after.</p> <p>4 Q. Have you ever been to Ecuador?</p> <p>5 A. Yes.</p> <p>6 Q. On how many occasions?</p> <p>7 A. I believe either three or four</p> <p>8 occasions.</p> <p>9 Q. Do you recall roughly when</p> <p>10 those three or four visits were?</p> <p>11 A. Yes.</p> <p>12 Q. Could you tell me?</p> <p>13 A. Sure. The most recent was in I</p> <p>14 believe it would have been September or</p> <p>15 October of 2007, and that was for the</p> <p>16 purpose of -- well, anyway, 2007.</p> <p>17 The other two or three visits</p> <p>18 were in the 1990s while the matter was</p> <p>19 pending in New York.</p> <p>20 Q. What was the purpose of your</p> <p>21 visit to Ecuador in September of 2007?</p> <p>22 A. It was to meet with several of</p> <p>23 the plaintiffs, the plaintiffs' counsel</p> <p>24 and plaintiffs' representatives to prepare</p> <p>25 for a mediation session before Mediator</p>	<p style="text-align: right;">25</p> <p>1 J. KOHN</p> <p>2 the plaintiffs that were either assisting</p> <p>3 in some way, they may have been attorneys</p> <p>4 or they may have simply been, you know,</p> <p>5 nonlawyers who were assisting, and there</p> <p>6 were several other client representatives,</p> <p>7 some of whom then came to the actual</p> <p>8 mediation in Washington D.C.</p> <p>9 There were probably four or</p> <p>10 five representatives of the plaintiffs in</p> <p>11 addition to Mr. Fajardo and Mr. Yanza who</p> <p>12 actually attended the mediation. Also</p> <p>13 Donziger was present during those meetings</p> <p>14 in the fall of '07.</p> <p>15 Q. Do you know if any of the named</p> <p>16 plaintiffs participated in any of those</p> <p>17 meetings?</p> <p>18 A. I could not be sure if they did</p> <p>19 or not.</p> <p>20 Q. The global inspection was going</p> <p>21 on in September of 2007. Did you meet</p> <p>22 Richard Stalin Cabrera Vega during your</p> <p>23 visit?</p> <p>24 A. I did not.</p> <p>25 Q. Have you ever met Richard</p>

7 (Pages 22 to 25)

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<p style="text-align: right;">26</p> <p>1 J. KOHN</p> <p>2 Stalin Cabrera Vega?</p> <p>3 A. I don't believe I have, no.</p> <p>4 Q. You have to let me finish even</p> <p>5 though you know what I'm going to say.</p> <p>6 A. I'm sorry.</p> <p>7 Q. How did you first come to know</p> <p>8 Mr. Cristobal Bonifaz?</p> <p>9 A. He contacted our firm sometime</p> <p>10 prior to the commencement of the case for</p> <p>11 the purpose of discussing our involvement</p> <p>12 in a potential litigation.</p> <p>13 Q. Had you known Mr. Bonifaz prior</p> <p>14 to that contact?</p> <p>15 A. I had not.</p> <p>16 Q. Had you worked with Mr. Bonifaz</p> <p>17 prior to the Ecuador related cases?</p> <p>18 A. No.</p> <p>19 Q. Was it your understanding that</p> <p>20 Mr. Bonifaz was an experienced U.S.</p> <p>21 attorney in 2003?</p> <p>22 A. In 2003 or in --</p> <p>23 Q. Yes, sir.</p> <p>24 A. Yes.</p> <p>25 Q. Mr. Bonifaz is Ecuadorian by</p>	<p style="text-align: right;">28</p> <p>1 J. KOHN</p> <p>2 A. Yes. And I don't believe that</p> <p>3 I -- I believe that one meeting that I</p> <p>4 attended with Winston & Strawn lawyers</p> <p>5 there were some individuals from Ecuador</p> <p>6 who were attorneys for some department, I</p> <p>7 don't know if they were with the Attorney</p> <p>8 General's office in Ecuador or some other</p> <p>9 entity in Ecuador.</p> <p>10 Q. It is not clear to you now who</p> <p>11 they were?</p> <p>12 A. I don't recall their names. I</p> <p>13 recall there was a man and a woman, but I</p> <p>14 don't recall names.</p> <p>15 Q. Other than Raul Herrera, what</p> <p>16 were the names of the Winston & Strawn</p> <p>17 lawyers that you met with?</p> <p>18 A. There was Eric Bloom, and was</p> <p>19 it Mr. Mitchell, I guess, just those two,</p> <p>20 I believe.</p> <p>21 Q. And how many occasions did you</p> <p>22 meet with counsel for the Republic of</p> <p>23 Ecuador in connection with the 2003</p> <p>24 litigation?</p> <p>25 A. I believe two or three.</p>
<p style="text-align: right;">27</p> <p>1 J. KOHN</p> <p>2 birth?</p> <p>3 A. Yes, as I understand he is.</p> <p>4 Q. Is it your understanding that</p> <p>5 Mr. Bonifaz had contacts within the</p> <p>6 Ecuadorian government in 2003?</p> <p>7 A. Yes, he had some contacts or</p> <p>8 knew certain people in different</p> <p>9 departments.</p> <p>10 Q. Have you ever met with anyone</p> <p>11 from the Republic of Ecuador or</p> <p>12 representing the Republic of Ecuador since</p> <p>13 the Aguinda case was filed in 2003?</p> <p>14 A. I met with U.S. lawyers who</p> <p>15 represented the Republic in some of the</p> <p>16 various litigations that have been related</p> <p>17 to the Aguinda case.</p> <p>18 Q. Those lawyers were from Winston</p> <p>19 & Strawn?</p> <p>20 A. They were from Winston &</p> <p>21 Strawn, and also Mr. Herrera, who I</p> <p>22 believe was at one time with Winston and</p> <p>23 one time with Arnold & Porter. I'm not</p> <p>24 sure where he was at that time.</p> <p>25 Q. Raul Herrera?</p>	<p style="text-align: right;">29</p> <p>1 J. KOHN</p> <p>2 something like that.</p> <p>3 Q. Do you recall the approximate</p> <p>4 dates of those meetings?</p> <p>5 A. One was maybe as late as 2008</p> <p>6 or 2009 possibly, and that's the meeting I</p> <p>7 recall where the other individuals from</p> <p>8 Ecuador were there, and then one was I</p> <p>9 think in early 2007, it was at a time when</p> <p>10 there was a hearing before Judge Sand on</p> <p>11 some matter, and we got together before or</p> <p>12 after -- I think after the hearing and</p> <p>13 talked for a while.</p> <p>14 Q. And do you remember an</p> <p>15 approximate date for the third meeting, if</p> <p>16 there was one?</p> <p>17 A. It probably would have been in</p> <p>18 between those two.</p> <p>19 Q. The meeting in 2008 or 2009,</p> <p>20 who attended that meeting?</p> <p>21 A. Mr. Bloom was there. I</p> <p>22 believe -- and again I may be incorrect on</p> <p>23 the name, Mr. Mitchell, but another lawyer</p> <p>24 who you would know who has been on the</p> <p>25 papers, I think the last name was</p>

8 (Pages 26 to 29)

<p style="text-align: right;">30</p> <p>1 J. KOHN</p> <p>2 Mitchell, taller fellow, I think a little</p> <p>3 bit more senior in the firm to Mr. Bloom,</p> <p>4 although Mr. Bloom is.</p> <p>5 I might be getting the name</p> <p>6 wrong. But he would be on those pleadings</p> <p>7 at that time.</p> <p>8 Q. Could it have been Mitchell</p> <p>9 MacNeil?</p> <p>10 A. It could be, yeah. At least I</p> <p>11 had one name right.</p> <p>12 And the two people from Ecuador</p> <p>13 that I identified, Donziger, and then I</p> <p>14 believe both Mr. Hillwig and Mr. Glazer</p> <p>15 from our firm were also there.</p> <p>16 Q. What are Mr. Hillwig's and</p> <p>17 Mr. Glazer's full name?</p> <p>18 A. Craig Hillwig and Neil Glazer.</p> <p>19 Q. What is their role at your</p> <p>20 firm?</p> <p>21 A. They are, or were, active</p> <p>22 litigating lawyers in the firm. I believe</p> <p>23 Mr. Hillwig was throughout that period of</p> <p>24 time a shareholder in the firm. We are a</p> <p>25 PC, so we don't have partners.</p>	<p style="text-align: right;">32</p> <p>1 J. KOHN</p> <p>2 A. Two to three hours.</p> <p>3 Q. What was the purpose of the</p> <p>4 meeting?</p> <p>5 A. It was to discuss the matters</p> <p>6 that were pending between the Republic and</p> <p>7 Chevron. I believe it was at or about the</p> <p>8 time of the -- what I refer to as the BIT</p> <p>9 arbitration matter beginning or there was</p> <p>10 some issues of seeking dismissal of those</p> <p>11 or seeking to enjoin the arbitration is my</p> <p>12 recollection.</p> <p>13 Q. When you say BIT, you are</p> <p>14 referring to the Bilateral Investment</p> <p>15 Treaty arbitration?</p> <p>16 A. Yes. I believe there was more</p> <p>17 than just one such litigation. So it was</p> <p>18 one of those.</p> <p>19 Q. Did counsel for the ROE and</p> <p>20 counsel for the Lago Agrio plaintiffs</p> <p>21 coordinate on a regular basis?</p> <p>22 A. I think there was coordination</p> <p>23 from time to time that I was aware of that</p> <p>24 would relate to these kinds of issues,</p> <p>25 when there was some matter pending in a</p>
<p style="text-align: right;">31</p> <p>1 J. KOHN</p> <p>2 I believe Mr. Glazer was not at</p> <p>3 that time, although -- I believe he was</p> <p>4 not, although, again, he may have been.</p> <p>5 Q. But Mr. Glazer was employed by</p> <p>6 the firm as a lawyer?</p> <p>7 A. Yes, absolutely.</p> <p>8 Q. Is Mr. Glazer still with Kohn</p> <p>9 Swift & Graf?</p> <p>10 A. No, he is not.</p> <p>11 Q. Is Mr. Hillwig still with Kohn</p> <p>12 Swift & Graf?</p> <p>13 A. Yes, he is.</p> <p>14 Q. Anyone else attended the 2008</p> <p>15 or 2009 meeting with counsel for the</p> <p>16 Republic of Ecuador?</p> <p>17 A. Not that I remember. There may</p> <p>18 have been, again, another Winston & Strawn</p> <p>19 lawyer in and out or something to that</p> <p>20 effect.</p> <p>21 Q. Where was this meeting held?</p> <p>22 A. At the Winston office in</p> <p>23 Washington D.C.</p> <p>24 Q. How long did it last,</p> <p>25 approximately?</p>	<p style="text-align: right;">33</p> <p>1 J. KOHN</p> <p>2 litigation between Chevron and the</p> <p>3 Republic of Ecuador that was about or</p> <p>4 implicating or relating in some way to the</p> <p>5 case in Ecuador, there would be some</p> <p>6 discussions. I was aware of some of</p> <p>7 those. There may have been others that</p> <p>8 Donziger was having that I'm not aware of.</p> <p>9 Q. The meetings that -- the</p> <p>10 meeting that you had in '08 or '09 with</p> <p>11 counsel for the Republic of Ecuador, were</p> <p>12 any decisions made at that meeting about</p> <p>13 positions that the plaintiffs would take?</p> <p>14 A. I don't recall decisions being</p> <p>15 made. I recall sort of discussing the</p> <p>16 procedural posture of the case, what</p> <p>17 options or what things plaintiffs might</p> <p>18 do. I think there was some discussion</p> <p>19 should plaintiffs intervene in those or</p> <p>20 seek to intervene or take some position.</p> <p>21 Q. In that same meeting, were</p> <p>22 there any decisions made as to any actions</p> <p>23 that the Republic of Ecuador would take?</p> <p>24 A. I don't recall it boiling down</p> <p>25 to kind of decision time. It was more of</p>

9 (Pages 30 to 33)

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<p style="text-align: right;">34</p> <p>1 J. KOHN</p> <p>2 information and trying to understand the</p> <p>3 process.</p> <p>4 Q. To your knowledge, did the</p> <p>5 Republic and the plaintiffs ever enter</p> <p>6 into a formal joint defense agreement?</p> <p>7 A. I do not know if a formal</p> <p>8 agreement was ever completed. I remember</p> <p>9 discussing the subject of a joint</p> <p>10 prosecution or joint defense agreement.</p> <p>11 Q. But you don't recall ever</p> <p>12 actually entering into one?</p> <p>13 A. My recollection is it was never</p> <p>14 finalized, but I could be wrong.</p> <p>15 Q. The meeting that you had with</p> <p>16 counsel for the Republic in early 2007,</p> <p>17 what was the purpose of that meeting?</p> <p>18 A. My recollection is it was after</p> <p>19 the argument or there was an evidentiary</p> <p>20 hearing of some kind before Judge Sand,</p> <p>21 and we walked over to some little</p> <p>22 restaurant near the courthouse and it was</p> <p>23 more just typical lawyers after an</p> <p>24 argument post, you know, postgame wrap-up,</p> <p>25 how did this go, what did you think of</p>	<p style="text-align: right;">36</p> <p>1 J. KOHN</p> <p>2 the plaintiffs?</p> <p>3 A. Not that I remember.</p> <p>4 Q. The in-between meeting that you</p> <p>5 mentioned that we are not sure about the</p> <p>6 date, do you know where that occurred?</p> <p>7 A. I don't have a clear</p> <p>8 recollection. I do remember a couple of</p> <p>9 phone calls with Eric Bloom and/or other</p> <p>10 Winston people, again, around these issues</p> <p>11 of the arbitration, around the issues of</p> <p>12 the BIT arbitration, similar in nature.</p> <p>13 There were certain -- I guess</p> <p>14 there was some effort on the part of the</p> <p>15 Winston lawyers to obtain the background</p> <p>16 information about the underlying dispute</p> <p>17 and litigation, which was the subject of</p> <p>18 their disputes with Chevron.</p> <p>19 Q. Did the ROE ever provide any</p> <p>20 financial support, to your knowledge, for</p> <p>21 the plaintiffs' litigation in Ecuador?</p> <p>22 A. I am not aware of any. I am</p> <p>23 aware of a process that occurred I believe</p> <p>24 in the late '90s where an individual</p> <p>25 working for the plaintiffs traveled around</p>
<p style="text-align: right;">35</p> <p>1 J. KOHN</p> <p>2 this point, what do you think the judge is</p> <p>3 going to decide.</p> <p>4 The issue at that point was</p> <p>5 whether there was an agreement to</p> <p>6 arbitrate that Chevron -- I believe it was</p> <p>7 Chevron's claim that the Republic had to</p> <p>8 arbitrate any claims relating to</p> <p>9 environmental issues in Ecuador, and it</p> <p>10 was boiling down to -- it was all those</p> <p>11 issues about the Gulf agreement and those</p> <p>12 old contracts and did anybody ever succeed</p> <p>13 to the rights to arbitrate under the</p> <p>14 original agreements.</p> <p>15 Q. In this meeting in early 2007,</p> <p>16 were the participants the same as in the</p> <p>17 '08-'09 meeting or were they different?</p> <p>18 A. I believe at that meeting it</p> <p>19 was only myself, Donziger, Mr. Bloom and</p> <p>20 Mr. MacNeil. There may have been another,</p> <p>21 a third Winston lawyer who was there, but</p> <p>22 I recall Eric and the other gentleman.</p> <p>23 Q. And were any agreements entered</p> <p>24 into at this meeting between counsel for</p> <p>25 the Republic of Ecuador and counsel for</p>	<p style="text-align: right;">37</p> <p>1 J. KOHN</p> <p>2 and got information about the various well</p> <p>3 sites and took photographs and did some</p> <p>4 other basic research and he may have</p> <p>5 had -- I think there was some discussion</p> <p>6 that he had some -- obtained some records</p> <p>7 from or had some assistance from</p> <p>8 PetroEcuador or had access to some files</p> <p>9 that they had and there may have been some</p> <p>10 other, as you frame it, assistance at that</p> <p>11 time, but that's the only thing that I can</p> <p>12 remember.</p> <p>13 Q. And is the individual you are</p> <p>14 referring to Manuel Pallares?</p> <p>15 A. Yes.</p> <p>16 Q. At what point in time did</p> <p>17 Mr. Pallares start working for the</p> <p>18 plaintiffs?</p> <p>19 A. I believe he was involved from</p> <p>20 the earliest point of the case, even</p> <p>21 perhaps before the matter was filed in New</p> <p>22 York, but certainly early in the New York</p> <p>23 litigation.</p> <p>24 Q. And who is Mr. Pallares? What</p> <p>25 does he do for a living?</p>

10 (Pages 34 to 37)

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<p style="text-align: right;">38</p> <p>1 J. KOHN</p> <p>2 A. That's a good question. I</p> <p>3 believe he has some relationship to</p> <p>4 Mr. Bonifaz as sort of a nephew or cousin</p> <p>5 or cousin of an in-law. There was some</p> <p>6 familial relationship, but not necessarily</p> <p>7 father and son or whatever.</p> <p>8 And he just seemed to be kind</p> <p>9 of, you know, an independent guy. He</p> <p>10 didn't look like he sort of necessarily</p> <p>11 had a 9 to 5 job, and he would pitch in at</p> <p>12 times and he would travel out to the</p> <p>13 Oriente and live out there for a couple of</p> <p>14 weeks and come back.</p> <p>15 Q. Was Mr. Pallares an engineer of</p> <p>16 any kind?</p> <p>17 A. I don't believe he was. I</p> <p>18 don't know. I really don't know. He very</p> <p>19 well could have had an engineering degree</p> <p>20 for all I know.</p> <p>21 Q. To the extent Mr. Pallares had</p> <p>22 any environmental or engineering training</p> <p>23 of any kind, you don't know what it might</p> <p>24 have been?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">40</p> <p>1 J. KOHN</p> <p>2 I was there and it was conducted in</p> <p>3 Spanish. So that was the extent of my</p> <p>4 contact with him.</p> <p>5 But no, other than that, no</p> <p>6 other contact as I can recall.</p> <p>7 Q. Did you have a private meeting</p> <p>8 of any kind with the Procurador?</p> <p>9 A. I think there was some</p> <p>10 discussion before, you know, the court</p> <p>11 appearance or before the press conference</p> <p>12 where, you know, a group of lawyers who</p> <p>13 were counsel for the Republic of Ecuador</p> <p>14 at that time, a group of the plaintiffs'</p> <p>15 lawyers, were present in a conference</p> <p>16 room, but it was more of a social</p> <p>17 discussion as I recall than a substantive</p> <p>18 one.</p> <p>19 Q. Are you aware of any requests</p> <p>20 by anyone acting on behalf of the</p> <p>21 Ecuadorian plaintiffs to the Republic of</p> <p>22 Ecuador to intervene in any way in the</p> <p>23 litigation against Chevron?</p> <p>24 A. I do not recall any, as you</p> <p>25 phrased that question with respect to</p>
<p style="text-align: right;">39</p> <p>1 J. KOHN</p> <p>2 Q. And as far as you know, he</p> <p>3 didn't have any such training?</p> <p>4 A. I'm not aware of any.</p> <p>5 Q. Did you ever have any</p> <p>6 interactions with President Correa?</p> <p>7 A. No.</p> <p>8 Q. Did you ever have any</p> <p>9 interactions with Alexis Mera?</p> <p>10 A. No.</p> <p>11 Q. One of President Correa's</p> <p>12 lawyers?</p> <p>13 A. No.</p> <p>14 Q. Did you ever have any</p> <p>15 interactions with any of the ministers in</p> <p>16 Ecuador, Minister of the Environment?</p> <p>17 There is a lot of ministries.</p> <p>18 A. I don't believe so. Again, in</p> <p>19 the New York phase there was a time when I</p> <p>20 believe it was the Procurador, which I</p> <p>21 understood to be comparable to the</p> <p>22 Attorney General of Ecuador, came to New</p> <p>23 York in connection with one of the</p> <p>24 hearings in New York, and he was present,</p> <p>25 he had a press conference in New York, and</p>	<p style="text-align: right;">41</p> <p>1 J. KOHN</p> <p>2 Chevron. There was certainly discussion</p> <p>3 and motion practice in the 1990s when</p> <p>4 Texaco was a defendant, or the defendant,</p> <p>5 about whether the Republic of Ecuador and</p> <p>6 PetroEcuador were indispensable parties,</p> <p>7 and then there was some subsequent</p> <p>8 litigation where I believe a motion was</p> <p>9 filed for some kind of limited</p> <p>10 intervention as I recall before Judge</p> <p>11 Rakoff, and it is all in that history.</p> <p>12 Q. But focusing on 2003 forward,</p> <p>13 are you aware of any requests by anyone</p> <p>14 acting on behalf of the Lago Agrio</p> <p>15 plaintiffs being made to the Republic of</p> <p>16 Ecuador for the Republic to intervene in</p> <p>17 any way in the litigation against Chevron?</p> <p>18 A. In the litigation in Ecuador?</p> <p>19 Q. Yes, sir.</p> <p>20 A. I'm not aware of any such</p> <p>21 request.</p> <p>22 Q. Why don't we turn to</p> <p>23 Mr. Donziger for a moment. Mr. Donziger</p> <p>24 speaks Spanish?</p> <p>25 A. Yes, he does.</p>

11 (Pages 38 to 41)

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<p style="text-align: right;">42</p> <p>1 J. KOHN</p> <p>2 Q. Mr. Donziger reads and can</p> <p>3 write in Spanish, to your knowledge?</p> <p>4 A. Yes.</p> <p>5 Q. Did he represent to you that he</p> <p>6 could do those things?</p> <p>7 A. Well, he did them. He didn't</p> <p>8 have to make a separate representation. I</p> <p>9 observed it.</p> <p>10 Q. In 2003, what was your</p> <p>11 understanding of Mr. Donziger's legal</p> <p>12 experience outside the Ecuador litigation?</p> <p>13 A. My understanding is that he had</p> <p>14 worked for a time in Washington D.C. as a</p> <p>15 public defender or otherwise had done some</p> <p>16 criminal defense work, that he had had</p> <p>17 some experience with respect to either</p> <p>18 writing, editing, working on some sort of</p> <p>19 a book relative to criminal law issues,</p> <p>20 and that his other litigation experience</p> <p>21 was fairly limited.</p> <p>22 He had been associated with</p> <p>23 some other firm or firms in New York for</p> <p>24 periods of time.</p> <p>25 Q. Did Mr. Donziger have any</p>	<p style="text-align: right;">44</p> <p>1 J. KOHN</p> <p>2 Mr. Donziger at that point</p> <p>3 really threw himself into the matter. I</p> <p>4 viewed it very much as -- almost as a</p> <p>5 volunteer. He was actively engaged with</p> <p>6 the proceedings in Ecuador to a point</p> <p>7 where he was doing more of it than</p> <p>8 Mr. Bonifaz was.</p> <p>9 I would have viewed him at that</p> <p>10 point as really still an associate or a</p> <p>11 lawyer on the Bonifaz team. And over a</p> <p>12 period of that time and fairly early in</p> <p>13 that trial phase, he sort of took the</p> <p>14 leadership role and spent the time and</p> <p>15 exerted himself and took on that role as</p> <p>16 the principal American lawyer who was</p> <p>17 engaged with the process in Ecuador.</p> <p>18 Q. Throughout the time that you</p> <p>19 and Kohn Swift & Graf were involved in the</p> <p>20 litigation from 2003 until 2010 --</p> <p>21 A. 2009, I believe November 2009.</p> <p>22 Q. Okay, I'm sorry, through</p> <p>23 2009 -- so I will withdraw that and try</p> <p>24 again.</p> <p>25 THE SPECIAL MASTER: Excuse me,</p>
<p style="text-align: right;">43</p> <p>1 J. KOHN</p> <p>2 experience litigating environmental</p> <p>3 issues, to your knowledge?</p> <p>4 A. I do not believe he did.</p> <p>5 Q. During the course of the 2003</p> <p>6 Ecuador litigation, Mr. Donziger traveled</p> <p>7 to Ecuador approximately once a month.</p> <p>8 Did Kohn Swift & Graf pay for these trips?</p> <p>9 A. We paid for certain of the</p> <p>10 trips, many of the trips. I would not be</p> <p>11 sure that we paid for every single one of</p> <p>12 them.</p> <p>13 Q. Once the case was filed in</p> <p>14 2003, was it part of Mr. Donziger's role</p> <p>15 on the case to be in Ecuador on a regular</p> <p>16 basis and monitor the litigation,</p> <p>17 supervise aspects of it?</p> <p>18 A. When the case was filed in</p> <p>19 2003, both Mr. Bonifaz and Mr. Donziger</p> <p>20 were actively involved or present in</p> <p>21 Ecuador, I don't know for the actual</p> <p>22 filing of the complaint, but certainly for</p> <p>23 the first phase of the -- what I</p> <p>24 understood was the first phase of the</p> <p>25 trial.</p>	<p style="text-align: right;">45</p> <p>1 J. KOHN</p> <p>2 I didn't catch that. Did you say</p> <p>3 something after the words -- I don't think</p> <p>4 the reporter caught it, but I thought I</p> <p>5 heard you say after the words 2009 that</p> <p>6 you withdrew, or something like that?</p> <p>7 THE WITNESS: Yes, I said in</p> <p>8 2009 when we withdrew.</p> <p>9 THE SPECIAL MASTER: Thank you.</p> <p>10 Q. Throughout the time that you</p> <p>11 and Kohn Swift & Graf were involved in the</p> <p>12 litigation from 2003 until 2009, was</p> <p>13 Mr. Donziger the lead U.S. lawyer on the</p> <p>14 case?</p> <p>15 A. Yes, other than that early</p> <p>16 phase that I just described with Bonifaz</p> <p>17 very early on.</p> <p>18 Q. Did Kohn Swift & Graf have a</p> <p>19 written agreement with Mr. Donziger in</p> <p>20 2003?</p> <p>21 A. No.</p> <p>22 Q. Did the plaintiffs have a</p> <p>23 written agreement with Mr. Donziger in</p> <p>24 2003?</p> <p>25 A. I'm not aware of a separate</p>

12 (Pages 42 to 45)

<p style="text-align: right;">46</p> <p>1 J. KOHN</p> <p>2 agreement with him. And, again, I'm</p> <p>3 unaware whether he was still part of the</p> <p>4 Bonifaz firm, as I mentioned that he would</p> <p>5 appear on pleadings as a lawyer in the</p> <p>6 Bonifaz firm. So in that sense there was</p> <p>7 an agreement between plaintiffs and the</p> <p>8 Bonifaz firm.</p> <p>9 Q. Excepting the early part of the</p> <p>10 case in 2003, would you say that</p> <p>11 Mr. Donziger worked on the case full-time</p> <p>12 while you were involved?</p> <p>13 A. Yes.</p> <p>14 Q. Was Mr. Donziger involved in</p> <p>15 developing the legal strategy for the</p> <p>16 complaint?</p> <p>17 A. I do not recall one way or the</p> <p>18 other whether he was.</p> <p>19 Q. During the time that Kohn Swift</p> <p>20 & Graf was involved, did the firm pay</p> <p>21 Mr. Donziger a stipend of some kind for</p> <p>22 his work on the case?</p> <p>23 A. At different points in time we</p> <p>24 did and, again, maybe not from 2003</p> <p>25 continually, but yes, the answer is yes.</p>	<p style="text-align: right;">48</p> <p>1 J. KOHN</p> <p>2 (Plaintiff's Exhibit 4003</p> <p>3 marked for identification.)</p> <p>4 Q. I have handed the witness a</p> <p>5 document that has been marked for the</p> <p>6 record as Exhibit 4003. This document has</p> <p>7 a header that reads 7181-12287,</p> <p>8 Texaco-Ecuador KS&G Expenses, 1993 to</p> <p>9 5-31-09, and bears the Bates numbers</p> <p>10 KSG00135246 through KSG00135258.</p> <p>11 Have you seen Exhibit 4003</p> <p>12 before, Mr. Kohn?</p> <p>13 A. I have seen these documents</p> <p>14 which make up this exhibit, but I don't</p> <p>15 believe they were all, if you will, part</p> <p>16 of one document originally. This seems to</p> <p>17 be a compilation of a series of documents.</p> <p>18 But I have seen each component part of</p> <p>19 Exhibit 4003.</p> <p>20 Q. Focusing just on the first two</p> <p>21 pages of Exhibit 4003, is this a summary</p> <p>22 of the expenses that Kohn Swift & Graf</p> <p>23 incurred in the Ecuador-related litigation</p> <p>24 for the time period noted in the header,</p> <p>25 '93 through 5-31-09?</p>
<p style="text-align: right;">47</p> <p>1 J. KOHN</p> <p>2 MS. NEUMAN: Let me show the</p> <p>3 witness a document we will mark as Exhibit</p> <p>4 4003.</p> <p>5 THE SPECIAL MASTER: Before you</p> <p>6 get to that, Mr. Kohn, when you withdrew</p> <p>7 in November of 2009, was there a writing</p> <p>8 evidencing that withdrawal?</p> <p>9 THE WITNESS: Yes, sir, there</p> <p>10 is a letter, I believe it is later -- late</p> <p>11 November of '09 and it has been filed with</p> <p>12 pleadings in this matter.</p> <p>13 THE SPECIAL MASTER: And it was</p> <p>14 from you to whom?</p> <p>15 THE WITNESS: It was from me to</p> <p>16 Mr. Fajardo, Mr. Yanza and the other</p> <p>17 leadership groups that were the same</p> <p>18 parties that are on retention agreements</p> <p>19 from 2002 or '3 and 2006, it was updated.</p> <p>20 THE SPECIAL MASTER: Is that a</p> <p>21 multi-page letter?</p> <p>22 THE WITNESS: My letter was a</p> <p>23 multi-page letter, yes.</p> <p>24 THE SPECIAL MASTER: Then I</p> <p>25 think I have seen it.</p>	<p style="text-align: right;">49</p> <p>1 J. KOHN</p> <p>2 A. Yes, it is.</p> <p>3 Q. And did someone in your offices</p> <p>4 prepare this summary?</p> <p>5 A. Yes.</p> <p>6 Q. And is this summary accurate as</p> <p>7 far as you know?</p> <p>8 A. I believe it is accurate for</p> <p>9 the purpose for which it was prepared,</p> <p>10 but, you know, I'm unclear as to why such</p> <p>11 a document would have been generated at</p> <p>12 that particular time. But I would assume</p> <p>13 it was an accurate reflection.</p> <p>14 Q. I think there is a handwritten</p> <p>15 note in the upper corner on the first page</p> <p>16 that says 6-12-07, to J. Kohn.</p> <p>17 A. It would be '09, I think. It</p> <p>18 looks like '07 on this, but I would</p> <p>19 speculate that it is '09 and it just got</p> <p>20 cut off in the photocopying, because the</p> <p>21 printed part runs through '09, so it would</p> <p>22 have been --</p> <p>23 Q. Oh, I see. And then there is</p> <p>24 also page 3 of the exhibit is a June 12th,</p> <p>25 '09 e-mail exchange between yourself and</p>

13 (Pages 46 to 49)

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<p style="text-align: right;">50</p> <p>1 J. KOHN</p> <p>2 Kathy Kenny?</p> <p>3 A. Yes.</p> <p>4 Q. Who is Ms. Kenny?</p> <p>5 A. She is the bookkeeper for our</p> <p>6 firm.</p> <p>7 Q. And is it your understanding</p> <p>8 that Ms. Kenny prepared the first two</p> <p>9 pages of Exhibit 403?</p> <p>10 A. She did, or they would have</p> <p>11 been prepared from her records and</p> <p>12 possibly another member of the firm staff</p> <p>13 put it into this particular form.</p> <p>14 Q. Do you know the purpose for</p> <p>15 which the first two pages of Exhibit 403</p> <p>16 were prepared?</p> <p>17 A. I don't recall what the</p> <p>18 specific issue might have been as to why,</p> <p>19 you know, in June of '09 such a document</p> <p>20 was prepared. I would think there was the</p> <p>21 general discussions at that point of what</p> <p>22 our firm's commitment had been to the</p> <p>23 matter. There was some discussions of</p> <p>24 other law firms potentially joining the</p> <p>25 matter for the plaintiffs.</p>	<p style="text-align: right;">52</p> <p>1 J. KOHN</p> <p>2 A. Yes.</p> <p>3 Q. Are those codes that Kohn Swift</p> <p>4 & Graf developed to allocate costs in the</p> <p>5 categories?</p> <p>6 A. Yes, these are our -- that</p> <p>7 would apply to any matter in the firm</p> <p>8 across the board.</p> <p>9 Q. Under Public Relations/Press,</p> <p>10 there is an entry that says SRD</p> <p>11 Productions, a little less than halfway</p> <p>12 down. Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. What is that?</p> <p>15 A. I do not know as I sit here</p> <p>16 today.</p> <p>17 Q. Do you know if that relates to</p> <p>18 Mr. Donziger?</p> <p>19 A. I do not know, although I</p> <p>20 believe those are his initials. I</p> <p>21 would -- I wouldn't say guess, but I would</p> <p>22 surmise that there were periods of time in</p> <p>23 the '90s when Mr. Donziger was essentially</p> <p>24 providing press release type services</p> <p>25 relative to the litigation, and perhaps he</p>
<p style="text-align: right;">51</p> <p>1 J. KOHN</p> <p>2 And it may have had some</p> <p>3 relation to sort of what is that history,</p> <p>4 what are the costs that are already</p> <p>5 expended in this matter if people are</p> <p>6 going to have discussions about things</p> <p>7 going forward.</p> <p>8 But I don't have a specific</p> <p>9 recollection as to why this piece of paper</p> <p>10 in this format was prepared at that</p> <p>11 moment.</p> <p>12 Q. The re line on the page 3</p> <p>13 e-mail exchange says Firm Expense Schedule</p> <p>14 For Meeting Today. Does that refresh your</p> <p>15 recollection in any way?</p> <p>16 A. It really does not beyond what</p> <p>17 I had said.</p> <p>18 Q. Without regard to the purpose</p> <p>19 for which it was prepared, any reason to</p> <p>20 think the first two pages of Exhibit 4003</p> <p>21 are not accurate?</p> <p>22 A. I have no reason to think it</p> <p>23 was not an accurate summary at that time.</p> <p>24 Q. Do you see on the left-hand</p> <p>25 margin where it says Cost Code?</p>	<p style="text-align: right;">53</p> <p>1 J. KOHN</p> <p>2 had formed some name or had some business</p> <p>3 name at that time.</p> <p>4 But that is -- I have no</p> <p>5 specific recollection of that. It could</p> <p>6 be something like that.</p> <p>7 Q. For the Ecuador case from 2003</p> <p>8 forward, did Mr. Donziger manage the press</p> <p>9 relations aspect of the case for the</p> <p>10 plaintiffs?</p> <p>11 A. Yes. There were certain</p> <p>12 professional firms that worked on the</p> <p>13 matter in the public relations/press</p> <p>14 relations field, but he managed and</p> <p>15 supervised that work.</p> <p>16 Q. Under number 7, Professional</p> <p>17 Services, do you see the name Alejandro</p> <p>18 Ponce-Villacis?</p> <p>19 A. Yes.</p> <p>20 Q. Who is Mr. Ponce-Villacis?</p> <p>21 A. He is an attorney who resides</p> <p>22 in Ecuador, did at that time. He may have</p> <p>23 also had some affiliation or relation with</p> <p>24 a U.S. law firm, but my recollection is he</p> <p>25 was an Ecuadorian lawyer who did some work</p>

14 (Pages 50 to 53)

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<p style="text-align: right;">54</p> <p>1 J. KOHN</p> <p>2 on the case.</p> <p>3 Q. Did you ever meet</p> <p>4 Mr. Ponce-Villacis?</p> <p>5 A. Yes, I did.</p> <p>6 Q. On how many occasions?</p> <p>7 A. I can recall two occasions.</p> <p>8 Q. When were those?</p> <p>9 A. One would have been at the time</p> <p>10 of the fall of 2007 meeting, and I recall</p> <p>11 he attended a dinner that we had.</p> <p>12 He was not, as I recall, at the</p> <p>13 meeting at the plaintiff office. I recall</p> <p>14 he came to the hotel where I was staying</p> <p>15 and then I traveled with him and I believe</p> <p>16 also Donziger to a restaurant where some</p> <p>17 other combination of the lawyers and/or</p> <p>18 plaintiffs were present for dinner.</p> <p>19 Q. What was the second occasion?</p> <p>20 A. The second I believe was at</p> <p>21 Mr. Donziger's wedding in New York City,</p> <p>22 and I don't recall the date. It was prior</p> <p>23 to '07.</p> <p>24 Q. Have you had any contact with</p> <p>25 Mr. Ponce-Villacis since 2007?</p>	<p style="text-align: right;">56</p> <p>1 J. KOHN</p> <p>2 retained?</p> <p>3 A. Yes.</p> <p>4 Q. Under the Technical Team</p> <p>5 Expenses, it lists Global Environmental</p> <p>6 Operation. Are you familiar with that</p> <p>7 company?</p> <p>8 A. I do not have a specific</p> <p>9 recollection as to how they fit into the</p> <p>10 operation.</p> <p>11 Q. Are you familiar with the name</p> <p>12 David Russell?</p> <p>13 A. Yes, I am.</p> <p>14 Q. And did Mr. Russell's company</p> <p>15 do the bulk of the environmental</p> <p>16 investigation in Ecuador early on?</p> <p>17 A. They did. Yes, they did. That</p> <p>18 was my supposition that perhaps this was</p> <p>19 Mr. Russell's time period, yes.</p> <p>20 Q. And if we wanted to see the</p> <p>21 amount of monies paid to Global</p> <p>22 Environmental, we would go over to the</p> <p>23 2004 column where there is an entry for</p> <p>24 \$620,000 and the 2005 column where there</p> <p>25 is an entry for \$88,309.88; is that right?</p>
<p style="text-align: right;">55</p> <p>1 J. KOHN</p> <p>2 A. No.</p> <p>3 Q. And do you know the type of</p> <p>4 work that he did on the case from 2003</p> <p>5 forward?</p> <p>6 A. I believe that he did work more</p> <p>7 in the nature of briefing or legal</p> <p>8 analysis as opposed to participating in</p> <p>9 the inspections out in the Oriente.</p> <p>10 He was affiliated with a firm</p> <p>11 in Quito, I believe, and he was a more</p> <p>12 experienced general litigator, is my</p> <p>13 understanding, than Mr. Fajardo, for</p> <p>14 example, so he was engaged, as I said,</p> <p>15 more for the purpose of developing the</p> <p>16 legal arguments or participating in</p> <p>17 briefing of more intense legal issues.</p> <p>18 Q. And is it Mr. Donziger that</p> <p>19 explained to you the reasons for</p> <p>20 Mr. Ponce-Villacis' engagement and his</p> <p>21 relative higher level of experience than</p> <p>22 that of Mr. Fajardo's?</p> <p>23 A. Yes, Mr. Donziger had contacted</p> <p>24 him before I knew of him.</p> <p>25 Q. And recommended that he be</p>	<p style="text-align: right;">57</p> <p>1 J. KOHN</p> <p>2 A. Correct. Yes.</p> <p>3 Q. Is there something amiss? You</p> <p>4 look like there is something amiss.</p> <p>5 A. It looks like some to me --</p> <p>6 some of these columns, it looks like a</p> <p>7 longer period of time of their involvement</p> <p>8 than I recall.</p> <p>9 So my sense might be that</p> <p>10 certain payments for other technical team</p> <p>11 experts are in this column for Global</p> <p>12 because I did not recall that Global was</p> <p>13 involved for that length of time and for</p> <p>14 that volume of work.</p> <p>15 Q. It is two years, '04 and '05?</p> <p>16 A. Yeah, but on my chart there is</p> <p>17 also payments in '06, '07 and '08. So</p> <p>18 that's what is giving me some pause and</p> <p>19 that causes me --</p> <p>20 MS. HAMILL: Use your pad to go</p> <p>21 along in the line.</p> <p>22 Q. There is a 620 and an 88,309</p> <p>23 and then there is nothing.</p> <p>24 A. Yes, got it now.</p> <p>25 Q. And is Dave Russell and Global</p>

15 (Pages 54 to 57)

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<p style="text-align: right;">58</p> <p>1 J. KOHN</p> <p>2 Environmental working in 2004 and 2005</p> <p>3 only more consistent with your</p> <p>4 recollection?</p> <p>5 A. Yes. I apologize, I was</p> <p>6 looking at the wrong column.</p> <p>7 Q. Underneath Global Environmental</p> <p>8 Operation, there is an Edison Camino</p> <p>9 Castro. Who is that?</p> <p>10 A. As I understand that, he is an</p> <p>11 Ecuadorian engineer who participated in</p> <p>12 the litigation during the judicial</p> <p>13 inspection phase.</p> <p>14 Q. Under Mr. Castro, there is</p> <p>15 listed Amazonia, Frente De Defensa. Do</p> <p>16 you see that?</p> <p>17 A. Yes.</p> <p>18 Q. That's the FDA organization?</p> <p>19 A. That's the entity that I refer</p> <p>20 to as the Frente, which as I understood it</p> <p>21 was sort of an umbrella organization of</p> <p>22 the various communities, tribal groups,</p> <p>23 etc., that worked and lived in the area</p> <p>24 and that was affected by the oil</p> <p>25 operations and that they had formed this</p>	<p style="text-align: right;">60</p> <p>1 J. KOHN</p> <p>2 initially, you know, very early in this</p> <p>3 whole process in the '90s, and whether it</p> <p>4 became more formal over time or when the</p> <p>5 action was filed in '03, it became -- or</p> <p>6 took on some other formality, I'm not</p> <p>7 familiar with that.</p> <p>8 Q. So do you have any knowledge as</p> <p>9 to whether the Frente was an actual legal</p> <p>10 entity of any kind?</p> <p>11 A. I understood that it was, but I</p> <p>12 couldn't, you know, be more specific as to</p> <p>13 what type of entity under Ecuadorian law</p> <p>14 or when such action was taken or did they</p> <p>15 change it over time.</p> <p>16 Q. Starting in --</p> <p>17 THE SPECIAL MASTER: Excuse me,</p> <p>18 before we leave the subject of the Frente,</p> <p>19 is that Mr. Yanza's organization?</p> <p>20 THE WITNESS: I understood he</p> <p>21 was involved with it or had some role in</p> <p>22 it and then -- yes. Yes, I viewed him as</p> <p>23 a spokesperson for it or as some kind of a</p> <p>24 leader of it.</p> <p>25 THE SPECIAL MASTER: Did it</p>
<p style="text-align: right;">59</p> <p>1 J. KOHN</p> <p>2 organization for the purpose of pursuing</p> <p>3 remedies both in the litigation and</p> <p>4 otherwise, and providing other kinds of</p> <p>5 services and activities for the people who</p> <p>6 lived in that area.</p> <p>7 Q. In 2003, did the FDA have any</p> <p>8 legal status? Was it incorporated in any</p> <p>9 way or recognized under Ecuadorian law in</p> <p>10 any way?</p> <p>11 A. I would not know about</p> <p>12 Ecuadorian law as such. But my</p> <p>13 understanding was that this was an</p> <p>14 organization or at least that concept of</p> <p>15 this umbrella group which consisted of</p> <p>16 what the people in Ecuador spoke of as the</p> <p>17 communities, and these actual indigenous</p> <p>18 tribes, that they had formed this umbrella</p> <p>19 group.</p> <p>20 When or at what point they may</p> <p>21 have filed some kind of legal document or</p> <p>22 articles of incorporation, I would not</p> <p>23 have any knowledge of that. But the fact</p> <p>24 of that kind of organization was something</p> <p>25 that was described to me by Mr. Bonifaz</p>	<p style="text-align: right;">61</p> <p>1 J. KOHN</p> <p>2 have an office, to your knowledge?</p> <p>3 THE WITNESS: Yes.</p> <p>4 THE SPECIAL MASTER: Where?</p> <p>5 THE WITNESS: Again, in the</p> <p>6 fall of '07 I went to Lago Agrio, and</p> <p>7 there was an office there that I</p> <p>8 understood was the office of the Frente.</p> <p>9 THE SPECIAL MASTER: What was</p> <p>10 on the front door?</p> <p>11 THE WITNESS: I don't recall</p> <p>12 the front door per se, but I do recall it</p> <p>13 being very much represented as the office</p> <p>14 of the Frente, and there were, you know, a</p> <p>15 dozen people in there and different</p> <p>16 offices and posters of activities they</p> <p>17 were working on.</p> <p>18 THE SPECIAL MASTER: Is it a</p> <p>19 different office from the Selva Viva</p> <p>20 offices?</p> <p>21 THE WITNESS: It was different</p> <p>22 than an office in Quito which I also</p> <p>23 attended, which was the one I was</p> <p>24 referring to earlier which I understood to</p> <p>25 be -- Selva Viva was the plaintiff legal</p>

16 (Pages 58 to 61)

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<p style="text-align: right;">62</p> <p>1 J. KOHN</p> <p>2 team. The Frente being something that had</p> <p>3 a broader mission as I understood it.</p> <p>4 Again, the Frente may have also</p> <p>5 had some kind of office in Quito, but I</p> <p>6 don't recall seeing that as anything</p> <p>7 separate from the plaintiff legal team</p> <p>8 office which was in a house, in a</p> <p>9 freestanding two or three-story home in</p> <p>10 Quito, just so you will know what I'm</p> <p>11 talking about.</p> <p>12 Q. In the Frente office in Lago,</p> <p>13 was that office in a freestanding house or</p> <p>14 some other --</p> <p>15 A. It was in sort of a low-rise</p> <p>16 office building, I recall.</p> <p>17 Q. And how many offices did they</p> <p>18 have?</p> <p>19 A. I recall walking up the stairs</p> <p>20 to a second floor or a third floor and it</p> <p>21 being a 50, 60-foot hallway down one way</p> <p>22 and then sort of an L shape and then</p> <p>23 another, you know, similar space going the</p> <p>24 other direction.</p> <p>25 Again, whether there were</p>	<p style="text-align: right;">64</p> <p>1 J. KOHN</p> <p>2 Selva Viva. That is Selva Viva,</p> <p>3 Ms. Neuman. Use your pad to go across. I</p> <p>4 think you had the same problem Mr. Kohn</p> <p>5 had a minute or so ago.</p> <p>6 MS. NEUMAN: I'm sorry.</p> <p>7 Q. It is \$40,000 in 2005. Do you</p> <p>8 see that payment, Mr. Kohn?</p> <p>9 A. For the Frente?</p> <p>10 Q. For the Frente.</p> <p>11 A. Yes, I see that one.</p> <p>12 Q. What was that payment for, or</p> <p>13 those payments?</p> <p>14 A. I could not tell you</p> <p>15 specifically what those were -- what</p> <p>16 that's related to.</p> <p>17 THE SPECIAL MASTER: Mr. Kohn,</p> <p>18 did you ever have an audit done by any</p> <p>19 outside organization of what these monies</p> <p>20 were for, all of these monies on this</p> <p>21 chart?</p> <p>22 THE WITNESS: We have not had</p> <p>23 an outside audit.</p> <p>24 THE SPECIAL MASTER: Have you</p> <p>25 had an inside person conduct an audit?</p>
<p style="text-align: right;">63</p> <p>1 J. KOHN</p> <p>2 other -- you know, there would have been</p> <p>3 four or five offices along each of those</p> <p>4 arms of the L. Again, whether they had</p> <p>5 other space in that building or not, you</p> <p>6 know, I was being sort of shown around.</p> <p>7 Q. From what you saw, the Frente</p> <p>8 at least had eight to ten offices in their</p> <p>9 Lago Agrio space?</p> <p>10 A. They had space and desks, yes.</p> <p>11 MR. GOMEZ: Excuse me, can we</p> <p>12 have a time frame for the record of this</p> <p>13 visit?</p> <p>14 THE WITNESS: This was the fall</p> <p>15 of 2007.</p> <p>16 Q. According to Exhibit 4003 --</p> <p>17 THE SPECIAL MASTER: I'm sorry,</p> <p>18 this one is 4003 that we have been looking</p> <p>19 at?</p> <p>20 MS. NEUMAN: Yes, sir.</p> <p>21 Q. Kohn Swift & Graf started</p> <p>22 making payments to the Frente in 2005, you</p> <p>23 will see there there is payments totaling</p> <p>24 \$335,000; do you see that, Mr. Kohn?</p> <p>25 THE SPECIAL MASTER: That is</p>	<p style="text-align: right;">65</p> <p>1 J. KOHN</p> <p>2 THE WITNESS: Not an audit per</p> <p>3 se, as I understand the term. At various</p> <p>4 times we received materials from Selva</p> <p>5 Viva and the Frente that collected</p> <p>6 receipts, and they were supposed to be</p> <p>7 doing it on a monthly basis, they did it</p> <p>8 at times on a monthly basis, other times</p> <p>9 they would lag.</p> <p>10 We did review those books of</p> <p>11 receipts when they came in to make sure</p> <p>12 they were, you know, in terms of the</p> <p>13 totals, reflecting these payments. Other</p> <p>14 matters on here, you know, transcript</p> <p>15 costs is minor compared to some of these</p> <p>16 others, so we didn't audit those. We</p> <p>17 didn't audit --</p> <p>18 THE SPECIAL MASTER: Did</p> <p>19 anybody do an investigation at your firm</p> <p>20 of these costs and expenses in connection</p> <p>21 with either your withdrawal from the case</p> <p>22 or the disavowal of the fees and expenses</p> <p>23 relating to the judgment?</p> <p>24 THE WITNESS: Well, we have</p> <p>25 certainly looked at these kinds of things</p>

17 (Pages 62 to 65)

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<p style="text-align: right;">66</p> <p>1 J. KOHN</p> <p>2 many times but have not gone back, and,</p> <p>3 you know, audited to see, you know, if</p> <p>4 Karen Hinton actually did something in</p> <p>5 that month, although that was a different</p> <p>6 kind of a retainer.</p> <p>7 As to the Selva expenses, we</p> <p>8 looked at those books but they lagged</p> <p>9 behind for a period of time and we have</p> <p>10 not gone back and tried to match it dollar</p> <p>11 for dollar.</p> <p>12 THE SPECIAL MASTER: Counsel,</p> <p>13 while we are on this document, can you</p> <p>14 just, for my benefit, explain to me the</p> <p>15 stamp here that says Confidential, Subject</p> <p>16 to Protective Order, does this have</p> <p>17 something to do with the Section 502</p> <p>18 stipulation? Is that what that stamp is</p> <p>19 related to?</p> <p>20 MS. NEUMAN: Yes, sir.</p> <p>21 THE SPECIAL MASTER: So that if</p> <p>22 you are going to be showing documents with</p> <p>23 a KSG prefix here today, they are all</p> <p>24 going to have this stamp, that is to say</p> <p>25 they will be part of the 502 stipulation,</p>	<p style="text-align: right;">68</p> <p>1 J. KOHN</p> <p>2 A. Got it, yes. Yes, I see that.</p> <p>3 Q. Who is Mr. Mutti?</p> <p>4 A. As I understand it, Mr. Mutti</p> <p>5 is an individual who had some</p> <p>6 responsibility with respect to maintaining</p> <p>7 or designing, updating, a website that</p> <p>8 related to the litigation.</p> <p>9 Q. What was the name of that</p> <p>10 website?</p> <p>11 A. My recollection is it was</p> <p>12 Toxico or something to that effect. It</p> <p>13 may have changed over time.</p> <p>14 Q. Chevron Toxico?</p> <p>15 A. I don't recall. I did not</p> <p>16 visit it particularly. I was aware -- I</p> <p>17 think I saw it in some of the earlier</p> <p>18 iterations.</p> <p>19 Q. When you say you didn't visit</p> <p>20 it, you mean you didn't go to it online?</p> <p>21 A. Correct.</p> <p>22 Q. And that website was sponsored</p> <p>23 by -- paid for by the plaintiffs' lawyers?</p> <p>24 A. In part. Again, whether there</p> <p>25 were other contributions that may have</p>
<p style="text-align: right;">67</p> <p>1 J. KOHN</p> <p>2 so they are part of the 450 documents or</p> <p>3 something like that that --</p> <p>4 MS. NEUMAN: 300, yes.</p> <p>5 THE SPECIAL MASTER: I'm sorry?</p> <p>6 MS. NEUMAN: 300.</p> <p>7 THE SPECIAL MASTER: 350</p> <p>8 documents which I otherwise would have</p> <p>9 been examining?</p> <p>10 MS. NEUMAN: That's exactly</p> <p>11 right.</p> <p>12 THE SPECIAL MASTER: All right,</p> <p>13 thank you. Or may still need to examine.</p> <p>14 MR. STAVERS: For the record,</p> <p>15 Special Master, it is 300 from Kohn and</p> <p>16 150 that were produced by Laura Garr.</p> <p>17 THE SPECIAL MASTER: Got it,</p> <p>18 thank you.</p> <p>19 Q. Mr. Kohn, also on Exhibit 4003</p> <p>20 there is a Joseph Mutti entry; do you see</p> <p>21 that? M-u-t-t-i.</p> <p>22 A. Can you point me to which</p> <p>23 general category?</p> <p>24 Q. Under Professional Expenses,</p> <p>25 Experts.</p>	<p style="text-align: right;">69</p> <p>1 J. KOHN</p> <p>2 been paid as well, I know we paid</p> <p>3 Mr. Mutti certain expenses to maintain it.</p> <p>4 Q. And post things to it and so</p> <p>5 on?</p> <p>6 A. That's correct.</p> <p>7 Q. Were there other websites that</p> <p>8 the plaintiffs' lawyers maintained other</p> <p>9 than Toxico or Chevron Toxico?</p> <p>10 A. I am not aware of others.</p> <p>11 Q. And who controlled the content</p> <p>12 on Toxico or Chevron Toxico?</p> <p>13 A. My understanding is that</p> <p>14 Donziger was involved with it, and I have</p> <p>15 a slight recollection whether Amazon Watch</p> <p>16 or some other third-party organizations</p> <p>17 may have had some input in that, but I</p> <p>18 couldn't be certain of that.</p> <p>19 Q. Did you or anyone at Kohn Swift</p> <p>20 & Graf have responsibility for reviewing</p> <p>21 and approving postings on Toxico or</p> <p>22 ChevronToxico.com before they were posted?</p> <p>23 A. No, I did not.</p> <p>24 Q. Did you have any control over</p> <p>25 the content of the website?</p>

18 (Pages 66 to 69)

<p style="text-align: right;">70</p> <p>1 J. KOHN</p> <p>2 A. I never raised any question or</p> <p>3 asserted any control. You know, I might</p> <p>4 have theoretically had that right or</p> <p>5 power, but I never engaged with that.</p> <p>6 Q. You never exercised any</p> <p>7 practical control over the website; is</p> <p>8 that right?</p> <p>9 A. Right, I did not.</p> <p>10 THE SPECIAL MASTER: Did you</p> <p>11 ever hear of a website called The Chevron</p> <p>12 Pit?</p> <p>13 THE WITNESS: I have not heard</p> <p>14 of that one.</p> <p>15 Q. Down further on Exhibit 403</p> <p>16 under Trial Expenses, there is shown</p> <p>17 payments to Cabezas & Wray. That is</p> <p>18 Alberto Wray's firm, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And you paid Mr. Wray for his</p> <p>21 representation of the plaintiffs in</p> <p>22 Ecuador, I mean your firm?</p> <p>23 A. We paid for at least some</p> <p>24 portion of that representation, yes.</p> <p>25 Q. Do you know if anyone else</p>	<p style="text-align: right;">72</p> <p>1 J. KOHN</p> <p>2 Q. On page 2 of Exhibit 4003,</p> <p>3 there are payments to Louis Dematties.</p> <p>4 What was his role on the case?</p> <p>5 A. I believe Mr. Dematties is a,</p> <p>6 and I could have this confused with</p> <p>7 another individual, was a professional</p> <p>8 photographer who prepared kind of a coffee</p> <p>9 table book, if you will, of conditions in</p> <p>10 Ecuador, and the firm purchased a number</p> <p>11 of those books from him and paid him for</p> <p>12 the books.</p> <p>13 I think he also may have been</p> <p>14 involved in exhibits, you know, gallery</p> <p>15 exhibits of his photographic work, and we</p> <p>16 may have had some payment in terms of</p> <p>17 underwriting or contributing to those</p> <p>18 events.</p> <p>19 Q. Did you pay Mr. Dematteis to</p> <p>20 take the pictures in the first place?</p> <p>21 A. No. As I understand it, it was</p> <p>22 a project he was working on. My</p> <p>23 recollection is it was after the work had</p> <p>24 already been done.</p> <p>25 Q. Also on the second page of</p>
<p style="text-align: right;">71</p> <p>1 J. KOHN</p> <p>2 compensated Mr. Wray?</p> <p>3 A. I'm not aware of anyone else</p> <p>4 doing that.</p> <p>5 Q. And to be clear, all the monies</p> <p>6 that were paid on behalf of the plaintiffs</p> <p>7 during the course of the Ecuador-related</p> <p>8 litigation came from the firm, Kohn Swift</p> <p>9 & Graf, and not from you personally; is</p> <p>10 that right?</p> <p>11 A. Yes, any Kohn Swift & Graf</p> <p>12 payments came from the firm. There were</p> <p>13 some other sources of payment other than</p> <p>14 Kohn Swift & Graf.</p> <p>15 Your question may have subsumed</p> <p>16 that issue that all expenses paid were</p> <p>17 only from Kohn Swift & Graf. But to the</p> <p>18 extent anything was paid from Kohn Swift &</p> <p>19 Graf, it was paid from the professional</p> <p>20 corporation.</p> <p>21 Q. You personally did not finance</p> <p>22 the litigation with your personal funds;</p> <p>23 is that fair, or accurate?</p> <p>24 A. Indirectly, I suppose, but it</p> <p>25 all was paid from the firm, yes.</p>	<p style="text-align: right;">73</p> <p>1 J. KOHN</p> <p>2 Exhibit 403, there is an entry for</p> <p>3 Fernando Reyes showing a payment to</p> <p>4 Mr. Reyes for \$3,000. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Do you know who Mr. Reyes is?</p> <p>7 A. I do not have a recollection of</p> <p>8 who he is although I believe -- no, it may</p> <p>9 be an individual who was one of the</p> <p>10 engineering people, but I don't recall.</p> <p>11 Q. If he was shown on this chart</p> <p>12 as receiving \$3,000, do you have any</p> <p>13 reason to believe that money was not paid</p> <p>14 to him?</p> <p>15 A. No, I do not have any reason to</p> <p>16 believe that.</p> <p>17 Q. Two spaces under Mr. Reyes,</p> <p>18 there is a payment -- another payment to</p> <p>19 the Frente of \$100,000.</p> <p>20 A. Yes.</p> <p>21 Q. If I have my lines correct.</p> <p>22 A. Uh-huh.</p> <p>23 Q. Do you know what the purpose of</p> <p>24 that payment was?</p> <p>25 A. I do not know what that</p>

19 (Pages 70 to 73)

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<p style="text-align: right;">74</p> <p>1 J. KOHN</p> <p>2 particular one was.</p> <p>3 Q. Do you have a general sense of</p> <p>4 why Kohn Swift & Graf was making payments</p> <p>5 directly to the Frente?</p> <p>6 A. I understood it was in</p> <p>7 connection with the funding of first the</p> <p>8 judicial inspections, other litigation</p> <p>9 expenses. At some point it sort of</p> <p>10 crossed over with Selva, but I did not</p> <p>11 distinguish in my mind the functioning of</p> <p>12 Selva versus the functioning of the</p> <p>13 Frente.</p> <p>14 My understanding was Selva was</p> <p>15 created sort of for ease of accounting in</p> <p>16 many ways to be able to disburse to the</p> <p>17 subcontractors and subvendors that were</p> <p>18 working on the litigation. Early on with</p> <p>19 the inspections, you know, we were making</p> <p>20 payments sort of directly to some of these</p> <p>21 engineers, or to the lab for the lab work.</p> <p>22 Then, as I understood, that was</p> <p>23 being consolidated either through the</p> <p>24 Frente or through Selva, in addition to</p> <p>25 the payments for the office and the</p>	<p style="text-align: right;">76</p> <p>1 J. KOHN</p> <p>2 not aware of it if they did.</p> <p>3 Q. You mentioned labs a minute</p> <p>4 ago. Are you aware that the plaintiffs</p> <p>5 for a period of time used a lab called</p> <p>6 Catolica in Ecuador?</p> <p>7 A. I don't think I ever knew a</p> <p>8 name of a lab. My recollection relating</p> <p>9 to labs was early on when Dave Russell was</p> <p>10 doing some work there was some issues or</p> <p>11 confusion about whether things would be</p> <p>12 shipped to the United States for analysis</p> <p>13 or they could be done in Ecuador and there</p> <p>14 were sort of some false starts or wheel</p> <p>15 spinning around that process.</p> <p>16 Then as the inspections got</p> <p>17 under way, I understood that there was</p> <p>18 some procedure in place that was, you</p> <p>19 know, able to move from point to point and</p> <p>20 from inspection to inspection and</p> <p>21 continue.</p> <p>22 Q. So Catolica is a lab that is</p> <p>23 actually located in Ecuador. Do you have</p> <p>24 any knowledge as to why the plaintiff team</p> <p>25 stopped using the Catolica lab?</p>
<p style="text-align: right;">75</p> <p>1 J. KOHN</p> <p>2 computers and the local press person, etc.</p> <p>3 Q. Two lines under the Frente</p> <p>4 entry, there is Payments to UMEA</p> <p>5 University (San Sebastian).</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. What was Dr. Sebastian's role</p> <p>9 on the plaintiffs' team?</p> <p>10 A. My recollection is he had done</p> <p>11 some sort of an epidemiological study or</p> <p>12 perhaps a case study that wouldn't rise to</p> <p>13 the level of an epidemiological study with</p> <p>14 respect to health issues.</p> <p>15 Again, whether he was asked to</p> <p>16 file some sort of affidavit or declaration</p> <p>17 or provide some more reporting with</p> <p>18 respect to his work.</p> <p>19 Q. Did the plaintiffs' legal team</p> <p>20 fund Dr. Sebastian's original study?</p> <p>21 A. I don't believe that to be the</p> <p>22 case.</p> <p>23 Q. Did the Frente fund</p> <p>24 Dr. Sebastian's original study?</p> <p>25 A. I do not know if they did. I'm</p>	<p style="text-align: right;">77</p> <p>1 J. KOHN</p> <p>2 A. None whatsoever.</p> <p>3 Q. The plaintiffs' team also used</p> <p>4 a lab called Havoc Laboratories. Did you</p> <p>5 visit that lab when you were in Ecuador?</p> <p>6 A. No.</p> <p>7 Q. Do you know why the plaintiffs'</p> <p>8 team started using the Havoc lab?</p> <p>9 A. No.</p> <p>10 Q. Mr. Donziger and the plaintiffs</p> <p>11 on multiple occasions prevented</p> <p>12 inspections of Havoc Laboratory.</p> <p>13 Did you ever discuss with</p> <p>14 Mr. Donziger why that inspection was being</p> <p>15 prevented?</p> <p>16 A. I recall some discussion about</p> <p>17 some motion practice, as I would call it,</p> <p>18 that Chevron was seeking some inspection.</p> <p>19 I remember, I believe, Donziger</p> <p>20 told me or would have told me at the time</p> <p>21 that Chevron was making some contention</p> <p>22 that the lab was substandard or not doing</p> <p>23 proper work and that the plaintiffs were</p> <p>24 opposing such motion, and that was about</p> <p>25 the extent of it.</p>

20 (Pages 74 to 77)

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<p style="text-align: right;">78</p> <p>1 J. KOHN</p> <p>2 Q. Did Mr. Donziger represent to</p> <p>3 you that the lab was accredited to do the</p> <p>4 testing that it was engaged in?</p> <p>5 A. You know, I don't remember</p> <p>6 specific words as such being spoken. I</p> <p>7 remember Mr. Donziger's summary of the</p> <p>8 situation to be this was, you know, an</p> <p>9 attack by Chevron upon this lab and upon</p> <p>10 any results that may have come out of this</p> <p>11 lab, that it was not meritorious and that</p> <p>12 the plaintiffs were opposing it or</p> <p>13 resisting.</p> <p>14 Q. If the lab was accredited to do</p> <p>15 the tests that it was doing and had the</p> <p>16 equipment on site to do those tests, did</p> <p>17 Mr. Donziger explain to you why an</p> <p>18 inspection of the lab would be harmful to</p> <p>19 the plaintiffs' case?</p> <p>20 A. He did not that I can recall.</p> <p>21 You know, I have sort of vague</p> <p>22 recollections of, you know, this is kind</p> <p>23 of being done to intimidate or to, you</p> <p>24 know, try to find any possible, you know,</p> <p>25 issue that could be used against them in</p>	<p style="text-align: right;">80</p> <p>1 J. KOHN</p> <p>2 inspection phase, and that there would be</p> <p>3 this final phase.</p> <p>4 Q. From 2004 forward did you get</p> <p>5 all your information relating to the</p> <p>6 Ecuador case from Mr. Donziger?</p> <p>7 A. There was a period of time when</p> <p>8 Mr. Bonifaz was still involved, although,</p> <p>9 as I say, he was becoming less so involved</p> <p>10 and Mr. Donziger was becoming more so</p> <p>11 involved, in that 2003-2004-2005 time</p> <p>12 frame. So all the information either came</p> <p>13 from Mr. Donziger or from Mr. Bonifaz.</p> <p>14 As Mr. Bonifaz left the case</p> <p>15 entirely in '05 or '06, then it really was</p> <p>16 exclusively Mr. Donziger. I also had some</p> <p>17 conversations with Alberto Wray, but they</p> <p>18 were -- I don't recall any, you know,</p> <p>19 individual conversation I had with</p> <p>20 Dr. Wray where it was just he and I were</p> <p>21 talking, it was always in the context of a</p> <p>22 conference call with either Mr. Bonifaz or</p> <p>23 Mr. Donziger or both and Dr. Wray on the</p> <p>24 line.</p> <p>25 THE SPECIAL MASTER: Excuse me,</p>
<p style="text-align: right;">79</p> <p>1 J. KOHN</p> <p>2 some way, you know, fishing expedition</p> <p>3 kind of thing or intimidation kind of</p> <p>4 thing.</p> <p>5 The notion of attacking the</p> <p>6 other side's labs and test results in</p> <p>7 litigation was not new or surprising to</p> <p>8 me. You know, we see it in U.S.</p> <p>9 litigation all the time, you know, people</p> <p>10 attack, you know, on both sides the</p> <p>11 scientific research. So I thought it was</p> <p>12 part of that -- what I have called the</p> <p>13 blocking and tackling of litigation.</p> <p>14 Q. And did you personally</p> <p>15 participate in the decision to prevent an</p> <p>16 inspection of the Havoc lab?</p> <p>17 A. I did not participate in those</p> <p>18 kind of, you know, in what I would call</p> <p>19 the motion practice, the strategic or the</p> <p>20 litigation tactics, the pleadings in</p> <p>21 Ecuador.</p> <p>22 I was informed of certain</p> <p>23 developments at times and informed</p> <p>24 generally of the overall process, that</p> <p>25 there was this first phase, there was the</p>	<p style="text-align: right;">81</p> <p>1 J. KOHN</p> <p>2 Ms. Neuman, my curiosity and need to</p> <p>3 actually understand all these things on</p> <p>4 the document in terms of the mechanical</p> <p>5 aspects of the document is getting the</p> <p>6 better of me.</p> <p>7 I now understand that the</p> <p>8 documents, to the extent labeled</p> <p>9 confidential, subject to protective order,</p> <p>10 mean that they are subject to the 502</p> <p>11 stipulation. May I inquire maybe of</p> <p>12 counsel for the witness about the stamp,</p> <p>13 the Bates stamp stamping, okay?</p> <p>14 MS. HAMILL: Yes, certainly.</p> <p>15 THE SPECIAL MASTER: I take it</p> <p>16 that since this document has a number of</p> <p>17 135246 at the bottom, that at least that</p> <p>18 many documents were collected or stamped</p> <p>19 for some purpose or another, right?</p> <p>20 MS. HAMILL: Yes, or pages of</p> <p>21 documents.</p> <p>22 MR. VOSS: It is pages of</p> <p>23 documents.</p> <p>24 MS. HAMILL: If it gets any</p> <p>25 more technical than that, I'm going to</p>

21 (Pages 78 to 81)

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<p style="text-align: right;">82</p> <p>1 J. KOHN</p> <p>2 hand this microphone to Mr. Voss.</p> <p>3 THE SPECIAL MASTER: Would you</p> <p>4 do that, because I'm about to get more</p> <p>5 technical, if I may.</p> <p>6 Can I find out when these</p> <p>7 documents were Bates stamped? Was it in</p> <p>8 connection with this litigation or was it</p> <p>9 in connection with the litigation that I</p> <p>10 know took place in Philadelphia relating</p> <p>11 to documents?</p> <p>12 MR. VOSS: This was in</p> <p>13 connection with this case.</p> <p>14 THE SPECIAL MASTER: And</p> <p>15 approximately when were they Bates</p> <p>16 stamped?</p> <p>17 MR. VOSS: These documents as</p> <p>18 produced I believe were Bates stamped in</p> <p>19 approximately December 2012, which doesn't</p> <p>20 fit the litigation time frame because we</p> <p>21 had been ordered to produce in 2011 on the</p> <p>22 Count 9 docket, and that was stayed and</p> <p>23 our production was on the FTP site.</p> <p>24 I later learned during the down</p> <p>25 time that that website had been deleted</p>	<p style="text-align: right;">84</p> <p>1 J. KOHN</p> <p>2 MR. VOSS: We were prepared to</p> <p>3 produce if an order to produce came out.</p> <p>4 Yes, they were prepared.</p> <p>5 THE SPECIAL MASTER: And was</p> <p>6 there a privilege log prepared before</p> <p>7 that, that is before the hearing?</p> <p>8 MR. VOSS: There were two</p> <p>9 privilege logs, correct.</p> <p>10 THE SPECIAL MASTER: And I take</p> <p>11 it the -- two privilege logs -- and I take</p> <p>12 it that in keeping with the statement of</p> <p>13 your colleague at the opening that for</p> <p>14 purposes of ascertaining whether or not</p> <p>15 your former clients -- or Mr. Kohn's</p> <p>16 former clients would assert privilege,</p> <p>17 that you allowed them to look at the</p> <p>18 privileged documents or gave them, that is</p> <p>19 their counsel, the privileged documents</p> <p>20 before the hearing had occurred; is that</p> <p>21 fair to say?</p> <p>22 MR. VOSS: I'm going to hand</p> <p>23 the mike to Ms. Hamill. She has more</p> <p>24 information on that than I do.</p> <p>25 MS. HAMILL: What is fair to</p>
<p style="text-align: right;">83</p> <p>1 J. KOHN</p> <p>2 inadvertently by our vendor, so in</p> <p>3 December 2012 we reproduced and</p> <p>4 re-Bates-stamped our production.</p> <p>5 THE SPECIAL MASTER: Now, there</p> <p>6 was a proceeding before Judge Francis,</p> <p>7 correct, relating to the assertions of</p> <p>8 privilege?</p> <p>9 MR. VOSS: I'm sorry, I missed</p> <p>10 the first part.</p> <p>11 THE SPECIAL MASTER: There was</p> <p>12 a proceeding before Magistrate Judge</p> <p>13 Francis relating to the issue of</p> <p>14 privilege?</p> <p>15 MR. VOSS: Correct.</p> <p>16 THE SPECIAL MASTER: And</p> <p>17 refresh me as to when that proceeding was,</p> <p>18 roughly.</p> <p>19 MR. VOSS: The hearing was mid</p> <p>20 July, maybe late July 2011.</p> <p>21 THE SPECIAL MASTER: So I</p> <p>22 presume therefore that whatever</p> <p>23 organization of the documents had taken</p> <p>24 place, had taken place before that</p> <p>25 hearing?</p>	<p style="text-align: right;">85</p> <p>1 J. KOHN</p> <p>2 say is that we gave them an opportunity</p> <p>3 had they wanted to review the documents to</p> <p>4 review them in advance of any production.</p> <p>5 At the very beginning of the</p> <p>6 litigation in Philadelphia, that's when</p> <p>7 the first privilege log was prepared, and</p> <p>8 we gave them an opportunity as well once</p> <p>9 that was prepared to also look at the</p> <p>10 documents at that time. So there were</p> <p>11 several opportunities along the way.</p> <p>12 THE SPECIAL MASTER: And did</p> <p>13 they avail themselves of those</p> <p>14 opportunities?</p> <p>15 MS. HAMILL: No, they did not.</p> <p>16 THE SPECIAL MASTER: On none of</p> <p>17 those occasions?</p> <p>18 MS. HAMILL: No, they did not.</p> <p>19 THE SPECIAL MASTER: At any</p> <p>20 time did the counsel for the Lago Agrio</p> <p>21 plaintiffs look through the -- ask for and</p> <p>22 look at the documents on your privilege</p> <p>23 logs?</p> <p>24 MS. HAMILL: No, they did not.</p> <p>25 But I will say that they did continue to</p>

22 (Pages 82 to 85)

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<p style="text-align: right;">86</p> <p>1 J. KOHN</p> <p>2 ask us to assert the privilege, but they</p> <p>3 did not look at the documents themselves.</p> <p>4 THE SPECIAL MASTER: And so</p> <p>5 they had no idea whether the documents</p> <p>6 were privileged or not from their point of</p> <p>7 view; is that correct?</p> <p>8 MS. HAMILL: In terms of them</p> <p>9 not physically inspecting them, that's</p> <p>10 correct.</p> <p>11 THE SPECIAL MASTER: And is it</p> <p>12 fair to say that until today no counsel</p> <p>13 for the Lago Agrio plaintiffs looked</p> <p>14 through the documents that were on your</p> <p>15 privilege log?</p> <p>16 MS. HAMILL: That's correct,</p> <p>17 prior to the production here recently</p> <p>18 pursuant to Judge Kaplan's order.</p> <p>19 THE SPECIAL MASTER: You mean</p> <p>20 last month?</p> <p>21 MS. HAMILL: Yes, your Honor.</p> <p>22 THE SPECIAL MASTER: Why don't</p> <p>23 we take our morning break right now.</p> <p>24 THE VIDEOGRAPHER: We are going</p> <p>25 off the record. The time is 10:43 a.m.</p>	<p style="text-align: right;">88</p> <p>1 J. KOHN</p> <p>2 Third Circuit, we also had the documents</p> <p>3 available on an FTP site which was</p> <p>4 available to all parties, including</p> <p>5 Chevron and the plaintiffs'</p> <p>6 representatives.</p> <p>7 THE SPECIAL MASTER: And do you</p> <p>8 know to what degree either the plaintiffs</p> <p>9 or the -- either side made use of that FTP</p> <p>10 site?</p> <p>11 MS. HAMILL: I don't have</p> <p>12 access to that information.</p> <p>13 THE SPECIAL MASTER: And is</p> <p>14 that the FTP site that accidentally</p> <p>15 deleted all of the documents?</p> <p>16 MS. HAMILL: That is a</p> <p>17 different one, your Honor.</p> <p>18 THE SPECIAL MASTER: So that</p> <p>19 FTP site is still there?</p> <p>20 MS. HAMILL: I don't believe</p> <p>21 that one is, but this has been a long,</p> <p>22 ongoing process, so there have been a</p> <p>23 number of iterations.</p> <p>24 THE SPECIAL MASTER: Got it,</p> <p>25 okay. Thanks very much.</p>
<p style="text-align: right;">87</p> <p>1 J. KOHN</p> <p>2 (Recess taken.)</p> <p>3 THE VIDEOGRAPHER: We are back</p> <p>4 on the record. The time is 11 a.m. This</p> <p>5 is the beginning of disk two.</p> <p>6 MS. HAMILL: Special Master</p> <p>7 Gitter, may I amplify a little bit on my</p> <p>8 prior information regarding access to the</p> <p>9 documents?</p> <p>10 THE SPECIAL MASTER: You may.</p> <p>11 MS. HAMILL: Your Honor, we</p> <p>12 went back and looked at some of our</p> <p>13 records and with respect to the 1782</p> <p>14 action in Philadelphia. First of all, we</p> <p>15 served our privilege log on all parties on</p> <p>16 December 6th, 2010. We then arranged over</p> <p>17 the following -- there was a hearing</p> <p>18 originally on December 17th before Judge</p> <p>19 DuBois, and following that hearing we</p> <p>20 arranged for plaintiffs' counsel, it was</p> <p>21 Patton Boggs at the time, to have access</p> <p>22 to the Kohn Swift documents.</p> <p>23 We then, following Judge</p> <p>24 DuBois' ruling allowing production and</p> <p>25 before a stay was put in place by the</p>	<p style="text-align: right;">89</p> <p>1 J. KOHN</p> <p>2 MS. HAMILL: You're welcome.</p> <p>3 Thank you.</p> <p>4 THE SPECIAL MASTER: There</p> <p>5 isn't an FTP site right now, right?</p> <p>6 MR. VOSS: Correct, no FTP</p> <p>7 site.</p> <p>8 THE SPECIAL MASTER: You said</p> <p>9 something that somebody looked at this</p> <p>10 smaller group of documents within the past</p> <p>11 month, that is the Section 502 stipulated</p> <p>12 documents?</p> <p>13 MS. HAMILL: We actually</p> <p>14 produced, made a full production to all</p> <p>15 parties subsequent to Judge Kaplan's</p> <p>16 ruling. So Chevron and the representative</p> <p>17 for the Lago Agrio plaintiffs got the full</p> <p>18 production, which was far more than the</p> <p>19 300 documents that have been identified.</p> <p>20 THE SPECIAL MASTER: Got it.</p> <p>21 Thank you very much.</p> <p>22 BY MS. NEUMAN:</p> <p>23 Q. Mr. Kohn, do you still have</p> <p>24 Exhibit 4003 in --</p> <p>25 THE SPECIAL MASTER: Excuse me</p>

23 (Pages 86 to 89)

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<p style="text-align: right;">90</p> <p>1 J. KOHN</p> <p>2 one second.</p> <p>3 Do you know exactly which</p> <p>4 ruling of Judge Kaplan, following which</p> <p>5 ruling it was?</p> <p>6 MS. HAMILL: It was in May. I</p> <p>7 would have to pull the --</p> <p>8 THE SPECIAL MASTER: Was it the</p> <p>9 May 15th order?</p> <p>10 MS. HAMILL: May 15th sounds</p> <p>11 correct, yes.</p> <p>12 THE SPECIAL MASTER: So</p> <p>13 sometime between May 15th and -- shortly</p> <p>14 after May 15th you made a full production</p> <p>15 to both sides?</p> <p>16 MR. VOSS: The order was</p> <p>17 followed by a subsequent order urging the</p> <p>18 parties to engage in a 502 conversation.</p> <p>19 We had that meet and confer and entered</p> <p>20 into a stipulation. Only upon the</p> <p>21 execution of the stipulation and execution</p> <p>22 by Judge Kaplan making it an order of the</p> <p>23 court did we produce.</p> <p>24 THE SPECIAL MASTER: That is</p> <p>25 later than May 15th, I'm certain. I think</p>	<p style="text-align: right;">92</p> <p>1 J. KOHN</p> <p>2 Mr. Donziger for his work on the</p> <p>3 Ecuador-related litigation by Kohn Swift &</p> <p>4 Graf?</p> <p>5 A. They are broken into the two</p> <p>6 pieces, one designated fees, one</p> <p>7 designated expenses, which were</p> <p>8 reimbursement of out-of-pocket expenses</p> <p>9 that he had.</p> <p>10 The other was the accumulation</p> <p>11 of what I think we had originally referred</p> <p>12 to earlier as a stipend, but we viewed it</p> <p>13 as an advance against any fee that might</p> <p>14 ultimately be recovered in the case.</p> <p>15 Q. And based on Exhibit 403, it</p> <p>16 looks like Kohn Swift & Graf paid to</p> <p>17 Mr. Donziger in fees, separate from any</p> <p>18 expenses, approximately \$150,000 a year in</p> <p>19 '03, '04 and '05; is that right? I'm</p> <p>20 sorry, '04, '05 and '06.</p> <p>21 A. Yes.</p> <p>22 Q. The amount that Mr. Donziger</p> <p>23 was paid as fees, who determined that</p> <p>24 amount?</p> <p>25 A. It was requested by Donziger</p>
<p style="text-align: right;">91</p> <p>1 J. KOHN</p> <p>2 it was actually May 24th.</p> <p>3 MS. HAMILL: On a break we can</p> <p>4 confirm that date.</p> <p>5 THE SPECIAL MASTER: That would</p> <p>6 be great. I would love to know it.</p> <p>7 MS. NEUMAN: Clarifying the</p> <p>8 record, Chevron selected the 300.</p> <p>9 THE SPECIAL MASTER: That I</p> <p>10 know.</p> <p>11 MS. NEUMAN: Okay.</p> <p>12 THE SPECIAL MASTER: And they</p> <p>13 said okay.</p> <p>14 BY MS. NEUMAN:</p> <p>15 Q. Mr. Kohn, do you still have</p> <p>16 Exhibit 403 in front of you, sir?</p> <p>17 A. I have Exhibit 4003, but I</p> <p>18 understand what you are talking about,</p> <p>19 just so the record is clear.</p> <p>20 Q. Towards the bottom of the first</p> <p>21 page there is a separate entry,</p> <p>22 Professional Fee - Steven Donziger.</p> <p>23 Do you see that entry?</p> <p>24 A. Yes.</p> <p>25 Q. Are those the payments made to</p>	<p style="text-align: right;">93</p> <p>1 J. KOHN</p> <p>2 initially as a monthly payment for time</p> <p>3 spent in Ecuador, and he requested it and</p> <p>4 I agreed to it and moved forward on that</p> <p>5 basis.</p> <p>6 Q. Did Mr. Donziger ever provide</p> <p>7 you with any time sheets or other</p> <p>8 accounting for his time spent on the case?</p> <p>9 A. Not in this period. Early on</p> <p>10 in the New York litigation we had a more</p> <p>11 formal exchange of time records, as is</p> <p>12 customary in class action cases that we</p> <p>13 are involved in.</p> <p>14 He would provide a document in</p> <p>15 the form of an invoice on a monthly basis</p> <p>16 or sometimes they would lag behind and he</p> <p>17 would say here is an invoice for the last</p> <p>18 two or three months. So there was the</p> <p>19 invoice. There was not broken-down time</p> <p>20 records. For large periods of this time</p> <p>21 it was my understanding that he was</p> <p>22 working virtually on a full-time basis.</p> <p>23 Q. When you say he provided an</p> <p>24 invoice, did the invoice have a</p> <p>25 description of what he was doing or was it</p>

24 (Pages 90 to 93)

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<p style="text-align: right;">94</p> <p>1 J. KOHN</p> <p>2 simply a monthly request for a certain</p> <p>3 amount of money?</p> <p>4 A. It was simply the monthly</p> <p>5 amount that had been agreed to and any</p> <p>6 particular time, and it would state the</p> <p>7 month and name, address, and the amount,</p> <p>8 and which month it related to.</p> <p>9 Q. Was anyone other than yourself</p> <p>10 and Mr. Donziger involved in agreeing to</p> <p>11 the amount that Mr. Donziger would be paid</p> <p>12 in this advance fee form?</p> <p>13 A. No.</p> <p>14 Q. Exhibit 4003 reflects that as</p> <p>15 of May 31st of 2009, Kohn Swift & Graf had</p> <p>16 paid to Mr. Donziger in fees \$833,577.75;</p> <p>17 is that accurate?</p> <p>18 A. Yes.</p> <p>19 Q. Exhibit 4003 also reflects that</p> <p>20 as of May 31st, 2009, Kohn Swift & Graf</p> <p>21 had reimbursed Mr. Donziger \$148,972.11;</p> <p>22 is that right?</p> <p>23 A. That's what it shows, yes.</p> <p>24 Q. Did Kohn Swift & Graf ever give</p> <p>25 monies to Mr. Donziger to spend on behalf</p>	<p style="text-align: right;">96</p> <p>1 J. KOHN</p> <p>2 at the bottom and then I see in the</p> <p>3 typewritten portion of the e-mail a</p> <p>4 different number for Donziger of 77. So I</p> <p>5 would have to study this to understand</p> <p>6 what the difference is.</p> <p>7 THE SPECIAL MASTER: I think</p> <p>8 for the record page 3 should be identified</p> <p>9 by its actual Bates number because</p> <p>10 different people count differently. It is</p> <p>11 Bates number KSG00135248.</p> <p>12 Q. And it is an e-mail exchange</p> <p>13 dated June 12, 2009 between Mr. Kohn and</p> <p>14 Kathy Kenny of the Kohn Swift & Graf firm?</p> <p>15 A. Correct.</p> <p>16 THE SPECIAL MASTER: Also I'm</p> <p>17 noticing that for the benefit of the court</p> <p>18 reporter, it is Exhibit 4003, not 403,</p> <p>19 that we are looking at.</p> <p>20 Q. On Exhibit 4003, it reflects at</p> <p>21 this point in time that Mr. Donziger still</p> <p>22 has invoices into Kohn Swift & Graf for an</p> <p>23 additional \$77,000 or \$65,000; is that</p> <p>24 right?</p> <p>25 A. That's what this e-mail and</p>
<p style="text-align: right;">95</p> <p>1 J. KOHN</p> <p>2 of litigation separate from the fees and</p> <p>3 expense reimbursements?</p> <p>4 MS. HAMILL: You mean</p> <p>5 personally to Mr. Donziger for his use?</p> <p>6 MS. NEUMAN: Or to his firm,</p> <p>7 once he had a firm, to put in an Ecuador</p> <p>8 case account.</p> <p>9 A. Not that I'm aware of. I'm</p> <p>10 aware of the monthly payment we have been</p> <p>11 talking about, and then the expenses were</p> <p>12 documented with receipts for those</p> <p>13 amounts.</p> <p>14 I wasn't aware of some other,</p> <p>15 if you would, like litigation fund advance</p> <p>16 contribution. I don't recall any such</p> <p>17 thing, and I don't believe any such thing</p> <p>18 occurred when we were involved in the</p> <p>19 case.</p> <p>20 Q. On page 3 of Exhibit 403, the</p> <p>21 e-mail indicates that as of this point in</p> <p>22 time, June of '09, Mr. Donziger is</p> <p>23 claiming to be owed an additional \$65,000.</p> <p>24 Do you see that?</p> <p>25 A. I see that handwritten portion</p>	<p style="text-align: right;">97</p> <p>1 J. KOHN</p> <p>2 handwritten note says, yes.</p> <p>3 Q. Were there additional monies</p> <p>4 paid to Mr. Donziger?</p> <p>5 A. I don't know as I sit here</p> <p>6 right now, but I believe there were</p> <p>7 schedules similar to the first two pages</p> <p>8 of 4003 that were prepared at some point</p> <p>9 after June of '09, and those might give</p> <p>10 you the answer to that.</p> <p>11 Q. Has Mr. Donziger ever refunded</p> <p>12 to Kohn Swift & Graf any of the fees he</p> <p>13 received in connection with the Ecuador</p> <p>14 litigation?</p> <p>15 A. No.</p> <p>16 Q. Has Mr. Donziger ever refunded</p> <p>17 to Kohn Swift & Graf any of the expense</p> <p>18 payments that were made by the firm on his</p> <p>19 behalf?</p> <p>20 A. No.</p> <p>21 Q. Mr. Wray, Alberto Wray, who was</p> <p>22 counsel of record in 2003, he was a former</p> <p>23 Ecuadorian Supreme Court justice?</p> <p>24 A. That was my understanding, yes.</p> <p>25 Q. Was he hired by yourself and</p>

25 (Pages 94 to 97)

<p style="text-align: right;">98</p> <p>1 J. KOHN</p> <p>2 Mr. Bonifaz to represent the plaintiffs in</p> <p>3 Ecuador?</p> <p>4 A. The contact was through</p> <p>5 Mr. Bonifaz, and, yes, there was --</p> <p>6 Dr. Wray had done some work in the New</p> <p>7 York case in terms of expert declarations</p> <p>8 and affidavits on forum non conveniens</p> <p>9 issues, and I'm not sure what the details</p> <p>10 of the retention, if you will, at that</p> <p>11 point were.</p> <p>12 And I believe or recall a</p> <p>13 letter agreement between Dr. Wray and</p> <p>14 Mr. Bonifaz of which our firm may have</p> <p>15 also been a signatory to, confirming his</p> <p>16 representation and involvement in the</p> <p>17 refiling of the matter in Ecuador.</p> <p>18 Q. The filing of the new complaint</p> <p>19 in Ecuador against Chevron?</p> <p>20 A. The 2003 complaint in Ecuador,</p> <p>21 correct.</p> <p>22 Q. And Chevron was not a party in</p> <p>23 New York, correct?</p> <p>24 A. At the end of the day, it was,</p> <p>25 or Chevron Texaco. The final proceedings</p>	<p style="text-align: right;">100</p> <p>1 J. KOHN</p> <p>2 understanding that Mr. Bonifaz had</p> <p>3 communicated with at least certain of the</p> <p>4 plaintiffs, with the leadership of the</p> <p>5 communities, as I have outlined, and that</p> <p>6 the plaintiffs were informed of what had</p> <p>7 happened or was happening in the New York</p> <p>8 matter.</p> <p>9 There was some lag time between</p> <p>10 the final forum non conveniens decisions</p> <p>11 and the refiling of the matter. It was</p> <p>12 certainly my understanding that Bonifaz</p> <p>13 and Dr. Wray had those communications.</p> <p>14 Q. The New York matter that was</p> <p>15 brought against Texaco, that was brought</p> <p>16 by 86 individual plaintiffs?</p> <p>17 A. It was some number like that.</p> <p>18 I couldn't swear it was 86, but it is</p> <p>19 something in that range.</p> <p>20 Q. When you say they were informed</p> <p>21 about what happened in that matter, was</p> <p>22 that by your firm or by someone else?</p> <p>23 A. Our firm did not have direct</p> <p>24 communication with them, although I did</p> <p>25 attend some group meetings in the '90s</p>
<p style="text-align: right;">99</p> <p>1 J. KOHN</p> <p>2 occurred after the merger. There was</p> <p>3 still some proceeding I think in the</p> <p>4 Second Circuit and certainly there was</p> <p>5 some final remand before Judge Rakoff.</p> <p>6 Q. Other than the letter agreement</p> <p>7 you have mentioned, any other written</p> <p>8 agreements with Mr. Wray?</p> <p>9 A. With Mr. Wray and Mr. Bonifaz</p> <p>10 and myself?</p> <p>11 Q. Yes, sir.</p> <p>12 A. Again, there may have been some</p> <p>13 things that predate, but I believe there</p> <p>14 was a letter prior to the filing of the</p> <p>15 2003 action that set the relationship.</p> <p>16 Q. Were any of the 48 plaintiffs</p> <p>17 consulted in connection with the retention</p> <p>18 of Mr. Wray by you?</p> <p>19 A. Not by me.</p> <p>20 Q. Do you know if any of the</p> <p>21 plaintiffs were consulted before Mr. --</p> <p>22 before you and Mr. Bonifaz entered into</p> <p>23 the letter agreement with Mr. Wray?</p> <p>24 A. I don't know from personal</p> <p>25 knowledge, but I had a general</p>	<p style="text-align: right;">101</p> <p>1 J. KOHN</p> <p>2 where there were large numbers of people</p> <p>3 there, and it is my understanding that at</p> <p>4 least many of those people were</p> <p>5 plaintiffs, and many of the plaintiffs</p> <p>6 were there, although maybe not 100</p> <p>7 percent.</p> <p>8 But it was my understanding</p> <p>9 that Mr. Bonifaz, getting it through</p> <p>10 Dr. Wray or through Luis Yanza or others,</p> <p>11 had a line of communication with those</p> <p>12 folks.</p> <p>13 Q. The large meetings in the '90s,</p> <p>14 did those take place in New York or</p> <p>15 somewhere else?</p> <p>16 A. They took place in Ecuador.</p> <p>17 Q. Any meetings with the</p> <p>18 plaintiffs in New York that you attended?</p> <p>19 A. There were meetings with</p> <p>20 smaller groups. There were a handful of</p> <p>21 representatives of plaintiffs that did</p> <p>22 appear at some of the court hearings</p> <p>23 during the New York litigation.</p> <p>24 Again, I could not converse</p> <p>25 with them directly because of the language</p>

26 (Pages 98 to 101)

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<p style="text-align: right;">102</p> <p>1 J. KOHN</p> <p>2 barrier, but I was, you know, present at</p> <p>3 the court and sort of socializing before</p> <p>4 and after.</p> <p>5 Q. Now, in the 2003 Ecuador</p> <p>6 litigation there was a power of attorney</p> <p>7 purporting to have been signed by the 48</p> <p>8 plaintiffs and nominating Mr. Wray as</p> <p>9 their lawyer filed in Ecuador.</p> <p>10 Are you aware of that?</p> <p>11 A. I'm not aware of that degree of</p> <p>12 detail.</p> <p>13 Q. Did you or anyone from your</p> <p>14 firm have any involvement in obtaining the</p> <p>15 plaintiffs' signatures on that document?</p> <p>16 A. No.</p> <p>17 Q. Are you aware that Dr. Gus</p> <p>18 Lesnevich has opined that 20 of the</p> <p>19 signatures on that document were forged?</p> <p>20 A. I am not aware of that opinion.</p> <p>21 Q. Pursuant to the complaint, the</p> <p>22 FDA is the entity designated to receive</p> <p>23 the judgment. Are you aware of that?</p> <p>24 A. Yes.</p> <p>25 Q. Did you participate in the</p>	<p style="text-align: right;">104</p> <p>1 J. KOHN</p> <p>2 its members. That was the way that I</p> <p>3 understood it as a legal construct.</p> <p>4 Q. And you understood the 2003</p> <p>5 Ecuador complaint to be brought as a</p> <p>6 collective action?</p> <p>7 A. Yes, or as -- or for this</p> <p>8 Frente organization which had that ability</p> <p>9 or that right to do so.</p> <p>10 Q. The Frente is also designated</p> <p>11 to receive the 10 percent payment under</p> <p>12 the Environmental Management Act.</p> <p>13 Were you involved in the</p> <p>14 decision that that money would go to the</p> <p>15 Frente?</p> <p>16 A. No, I was not, and I think that</p> <p>17 all took place after November of 2009 when</p> <p>18 we were no longer involved.</p> <p>19 Q. No, it is in the complaint.</p> <p>20 A. Oh, okay. I was not involved</p> <p>21 with that particular decision. Again, my</p> <p>22 understanding was this was the procedure</p> <p>23 that applied to this kind of an action in</p> <p>24 Ecuador and they were following that</p> <p>25 procedure.</p>
<p style="text-align: right;">103</p> <p>1 J. KOHN</p> <p>2 decision to make the FDA the beneficiary</p> <p>3 of the judgment?</p> <p>4 A. I was aware of that procedure,</p> <p>5 as it was explained to me from Dr. Wray</p> <p>6 and Mr. Bonifaz.</p> <p>7 I don't have clear recollection</p> <p>8 whether it was explained in a conversation</p> <p>9 directly with Dr. Wray or it was just a</p> <p>10 conversation I had with Bonifaz relaying</p> <p>11 what Dr. Wray had said. But the way it</p> <p>12 was explained to me is that Ecuadorian law</p> <p>13 permitted or indeed may have even required</p> <p>14 this kind of procedure of a collective</p> <p>15 action or a collective plaintiff having</p> <p>16 the standing and the ability to assert the</p> <p>17 claim, and indeed it may have even risen</p> <p>18 to the level that it had to be such an</p> <p>19 entity, that there was no kind of analog</p> <p>20 to a multi-plaintiff class action.</p> <p>21 And I sort of analogize it in</p> <p>22 my own mind to some of those old Supreme</p> <p>23 Court cases that talked about</p> <p>24 organizational standing, where NAACP had</p> <p>25 standing in cases as an organization for</p>	<p style="text-align: right;">105</p> <p>1 J. KOHN</p> <p>2 Q. Are you familiar with the</p> <p>3 Environmental Management Act, the EMA,</p> <p>4 under Ecuadorian law?</p> <p>5 A. No, I am not.</p> <p>6 Q. Do you know if anyone</p> <p>7 affiliated with the Ecuadorian plaintiffs</p> <p>8 was involved in getting that legislation</p> <p>9 passed?</p> <p>10 A. I do not know that. You know,</p> <p>11 I recall sort of a general swirl of</p> <p>12 contentions around legislation, I thought</p> <p>13 some related to the Law 55, which I</p> <p>14 thought dealt with forum non issues and</p> <p>15 some may have related to this</p> <p>16 environmental management law, but I can't</p> <p>17 separate out those discussions or</p> <p>18 understandings.</p> <p>19 I was not involved in any</p> <p>20 communication that I can recall with</p> <p>21 anyone in Ecuador about it.</p> <p>22 Q. About the Environmental</p> <p>23 Management Act?</p> <p>24 A. Right.</p> <p>25 Q. Did Mr. Donziger ever relate to</p>

27 (Pages 102 to 105)

<p style="text-align: right;">106</p> <p>1 J. KOHN</p> <p>2 you that he was involved with anyone in</p> <p>3 Ecuador regarding the drafting or the</p> <p>4 enactment of the Environmental Management</p> <p>5 Act?</p> <p>6 A. I don't remember him ever</p> <p>7 saying anything about that.</p> <p>8 Q. Did Mr. Wray relate to you that</p> <p>9 he was involved with anyone in Ecuador</p> <p>10 regarding the drafting or enactment of the</p> <p>11 Environmental Management Act?</p> <p>12 A. I don't recall any such</p> <p>13 discussion with Dr. Wray about that.</p> <p>14 Q. What about Mr. Bonifaz?</p> <p>15 A. I have a vague recollection</p> <p>16 about Mr. Bonifaz -- there was a period of</p> <p>17 time, if I could backtrack in my answer,</p> <p>18 when given the decision of the lower court</p> <p>19 on forum non conveniens and the pendency</p> <p>20 of the second appeal, that Mr. Bonifaz and</p> <p>21 I discussed the very likely prospect that</p> <p>22 the order would be upheld, perhaps with</p> <p>23 some conditions, and if the case were to</p> <p>24 proceed, there would have to be an action</p> <p>25 in Ecuador.</p>	<p style="text-align: right;">108</p> <p>1 J. KOHN</p> <p>2 he signs papers, etc.</p> <p>3 Q. Is it your understanding that</p> <p>4 all Ecuadorian lawyers are called Dr.?</p> <p>5 A. Yes, that's my understanding,</p> <p>6 yes.</p> <p>7 THE SPECIAL MASTER: Especially</p> <p>8 by their mothers.</p> <p>9 Q. Do you know a Jose Javier</p> <p>10 Fajardo Mendoza?</p> <p>11 A. I don't believe so. I know</p> <p>12 Pablo Fajardo, but I don't know another</p> <p>13 Fajardo.</p> <p>14 Q. Do you know his brother who</p> <p>15 goes by the name Jose Javier Fajardo</p> <p>16 Mendoza?</p> <p>17 A. I do not.</p> <p>18 Q. Did you know of his brother</p> <p>19 being president of the FDA at any point in</p> <p>20 time?</p> <p>21 A. No.</p> <p>22 Q. Luis Yanza, you met Mr. Yanza?</p> <p>23 A. Yes, I have.</p> <p>24 Q. On how many occasions have you</p> <p>25 met Mr. Yanza?</p>
<p style="text-align: right;">107</p> <p>1 J. KOHN</p> <p>2 I have a vague recollection</p> <p>3 that in that period, which stretched, you</p> <p>4 know, 18 months or more, that Mr. Bonifaz</p> <p>5 was talking about some things that maybe</p> <p>6 should be done to prepare or to be in a</p> <p>7 stronger position in Ecuador. Do I have a</p> <p>8 specific recollection that that involved</p> <p>9 this statute? I don't. I don't even know</p> <p>10 if it was passed in that time period or</p> <p>11 earlier or what happened.</p> <p>12 Q. It was enacted in 1998. Does</p> <p>13 that refresh your recollection?</p> <p>14 A. That would be before the time</p> <p>15 period that I was really thinking of. I</p> <p>16 think at that point we still thought we</p> <p>17 were going to be in New York. But, again,</p> <p>18 it could have overlapped with the general</p> <p>19 recollection I have.</p> <p>20 Q. You referred to Mr. Wray as</p> <p>21 Dr. Wray. Is that because in Spanish</p> <p>22 lawyers are referred to as Dr. as opposed</p> <p>23 to Mr.?</p> <p>24 A. That's the way I understand he</p> <p>25 is referred to in Ecuador. That's the way</p>	<p style="text-align: right;">109</p> <p>1 J. KOHN</p> <p>2 A. Maybe somewhere between</p> <p>3 eight -- or seven or eight to ten to</p> <p>4 twelve.</p> <p>5 Q. How many of those meetings were</p> <p>6 in the United States?</p> <p>7 A. Well, again, I was in Ecuador</p> <p>8 either three or four times, so the</p> <p>9 remaining number would have been in the</p> <p>10 U.S.</p> <p>11 Q. You met with Mr. Yanza each of</p> <p>12 the times you were in Ecuador?</p> <p>13 A. He was there each of the times</p> <p>14 I was there, yes.</p> <p>15 Q. What was Mr. Yanza's role as</p> <p>16 part of the plaintiffs' team in the</p> <p>17 Ecuador litigation, the 2003 Ecuador</p> <p>18 litigation?</p> <p>19 A. I understood that he was, you</p> <p>20 know, a leader or at some point maybe the</p> <p>21 liaison between the Frente and the legal</p> <p>22 team, both the Ecuador legal team and the</p> <p>23 U.S. lawyers, that he was involved from</p> <p>24 the very outset of the organizing of the</p> <p>25 folks who lived there, the outset of the</p>

28 (Pages 106 to 109)

<p style="text-align: right;">110</p> <p>1 J. KOHN</p> <p>2 process of considering and moving ahead</p> <p>3 with litigation.</p> <p>4 He helped facilitate gathering</p> <p>5 information relative to the case. He</p> <p>6 helped facilitate communication with the</p> <p>7 plaintiffs. He would be, using my NAACP</p> <p>8 example, as he was the executive director</p> <p>9 or president of the association or held</p> <p>10 those kinds of titles at various times.</p> <p>11 Q. Kohn Swift & Graf paid</p> <p>12 Mr. Yanza a salary of some sort; is that</p> <p>13 right?</p> <p>14 A. I understood that through the</p> <p>15 payments to Selva Viva, and also I</p> <p>16 understood Mr. Yanza was really the</p> <p>17 organizer or an officer of Selva Viva.</p> <p>18 It was represented to me by</p> <p>19 Mr. Donziger that Mr. Yanza was an</p> <p>20 accountant or had accounting background</p> <p>21 and training and that he maintained those,</p> <p>22 you know, the checkbook or he was the</p> <p>23 treasurer, if you will, and bookkeeper and</p> <p>24 accountant for Selva, and that from the</p> <p>25 monthly payments that were budgeted for</p>	<p style="text-align: right;">112</p> <p>1 J. KOHN</p> <p>2 THE SPECIAL MASTER: Did you</p> <p>3 ever see him in the outtakes or film out</p> <p>4 of doors?</p> <p>5 THE WITNESS: You know, I</p> <p>6 certainly have seen him out of doors,</p> <p>7 whether it was in that film, I don't know</p> <p>8 whether he also was in the 60 Minutes</p> <p>9 version. But I have some general</p> <p>10 recollection of seeing him, yes.</p> <p>11 THE SPECIAL MASTER: Do you</p> <p>12 have any recollection of seeing him with</p> <p>13 effigies of the two criminal defendants,</p> <p>14 Mr. Pallares and Mr. Veiga?</p> <p>15 THE WITNESS: I don't remember</p> <p>16 that. But I sort of remember him being</p> <p>17 present at sort of demonstrations, there</p> <p>18 were sort of marches and demonstrations at</p> <p>19 the beginning of the litigation. I</p> <p>20 believe I saw photos of that.</p> <p>21 I remember seeing him present,</p> <p>22 I think they had press events, outside</p> <p>23 press conferences, I can remember him</p> <p>24 being present. I don't remember the</p> <p>25 effigies.</p>
<p style="text-align: right;">111</p> <p>1 J. KOHN</p> <p>2 Selva, he was receiving some salary of a</p> <p>3 fairly modest amount, but I don't recall</p> <p>4 the exact amount.</p> <p>5 Q. Was it your understanding that</p> <p>6 salary was for his accounting work?</p> <p>7 A. Accounting work and the other</p> <p>8 time and expenditure of effort that he was</p> <p>9 putting into the case. I understood that</p> <p>10 he was essentially full-time on the</p> <p>11 various issues that I described.</p> <p>12 THE SPECIAL MASTER: Mr. Kohn,</p> <p>13 did you see any of the outtakes of the</p> <p>14 film Crude?</p> <p>15 THE WITNESS: I saw a few of</p> <p>16 them that had been part of some -- the</p> <p>17 briefing in this matter. I have not by</p> <p>18 any means seen all of them.</p> <p>19 THE SPECIAL MASTER: Did you</p> <p>20 see any involving Mr. Yanza?</p> <p>21 THE WITNESS: I don't know if</p> <p>22 the -- I have seen -- I saw Mr. Yanza in</p> <p>23 the Crude film, but I can't distinguish as</p> <p>24 I sit here today between outtakes and the</p> <p>25 actual thing that went to the film.</p>	<p style="text-align: right;">113</p> <p>1 J. KOHN</p> <p>2 BY MS. NEUMAN:</p> <p>3 Q. Are you aware of Mr. Yanza</p> <p>4 meeting with the judges on the Ecuador</p> <p>5 case on behalf of the plaintiffs?</p> <p>6 A. I am not.</p> <p>7 Q. Are you aware of Mr. Yanza</p> <p>8 being involved in conversations about</p> <p>9 legal strategy on the case?</p> <p>10 A. Yes, he was.</p> <p>11 Q. He was involved in those?</p> <p>12 A. Yes, he was.</p> <p>13 Q. Did Kohn Swift & Graf ever do a</p> <p>14 background check on Mr. Yanza?</p> <p>15 A. No.</p> <p>16 Q. Do you know what degrees, if</p> <p>17 any, Mr. Yanza holds?</p> <p>18 A. No, I do not.</p> <p>19 Q. Do you know anything about his</p> <p>20 background other than what he or</p> <p>21 Mr. Donziger have related to you?</p> <p>22 A. No, other than I guess some</p> <p>23 background was provided by Mr. Bonifaz.</p> <p>24 You know, again, when I first met</p> <p>25 Mr. Yanza, it was very much with</p>

29 (Pages 110 to 113)

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<p style="text-align: right;">114</p> <p>1 J. KOHN</p> <p>2 Mr. Bonifaz. Just getting some of this</p> <p>3 general description of what his role was</p> <p>4 and how he was involved with the Frente</p> <p>5 would have come as much perhaps from</p> <p>6 Mr. Bonifaz as from Mr. Donziger.</p> <p>7 Q. The salary that was paid to</p> <p>8 Mr. Yanza by Selva Viva, did Mr. Donziger</p> <p>9 set that salary?</p> <p>10 A. Mr. Donziger was involved with</p> <p>11 and developed the budget, requested it of</p> <p>12 us, explained what the items were. Again,</p> <p>13 whether he, as you say, decided what it</p> <p>14 was or that was a result of discussions he</p> <p>15 may have had with Yanza and Fajardo and</p> <p>16 others, I don't know.</p> <p>17 But from my perspective,</p> <p>18 Donziger was, you know, was the one</p> <p>19 responsible for the, you know, supervision</p> <p>20 of that operation and he related --</p> <p>21 relayed to us and developed the budget and</p> <p>22 we agreed to move forward on that basis.</p> <p>23 Q. I'm going to try and break that</p> <p>24 down just a little bit.</p> <p>25 Selva Viva was the organization</p>	<p style="text-align: right;">116</p> <p>1 J. KOHN</p> <p>2 strictly an annual process. It might have</p> <p>3 changed after a six-month period and then</p> <p>4 it might have been the same for 18 months.</p> <p>5 But it did evolve and change.</p> <p>6 Again, I didn't view</p> <p>7 necessarily that Mr. Donziger was going to</p> <p>8 develop that. This was something that</p> <p>9 sort of developed from what he was doing</p> <p>10 in Ecuador and worked its way back to me</p> <p>11 and to our firm.</p> <p>12 Q. So periodically on behalf of</p> <p>13 Selva Viva Mr. Donziger would present you</p> <p>14 with proposed budgets for financing the</p> <p>15 litigation?</p> <p>16 A. Correct.</p> <p>17 Q. You and he would go through the</p> <p>18 proposed Selva Viva budgets and either</p> <p>19 agree or disagree on the amounts that</p> <p>20 would be provided to Selva Viva to fund</p> <p>21 the litigation; is that right?</p> <p>22 A. That is correct.</p> <p>23 Q. The amounts that appeared in</p> <p>24 the budget that were presented to you by</p> <p>25 Mr. Donziger, you don't have personal</p>
<p style="text-align: right;">115</p> <p>1 J. KOHN</p> <p>2 that was created in Ecuador to manage the</p> <p>3 litigation funds of the plaintiffs' team;</p> <p>4 is that right?</p> <p>5 A. That's correct, as I understand</p> <p>6 it, yes.</p> <p>7 Q. Mr. Donziger was the president</p> <p>8 of Selva Viva, correct?</p> <p>9 A. I did not understand that until</p> <p>10 your discovery in this action. At the</p> <p>11 time I was involved, I understood that it</p> <p>12 was the Ecuadorian folks who were officers</p> <p>13 of that.</p> <p>14 Q. Mr. Donziger never told you</p> <p>15 that he had made himself president of</p> <p>16 Selva Viva?</p> <p>17 A. Not that I can remember.</p> <p>18 Q. Whatever his official corporate</p> <p>19 role, from your perspective it was</p> <p>20 Mr. Donziger's responsibility to present</p> <p>21 Kohn Swift & Graf with Selva Viva's budget</p> <p>22 for the litigation. Was that budget done</p> <p>23 on an annual basis?</p> <p>24 A. It was done periodically. It</p> <p>25 changed over some time. It wasn't</p>	<p style="text-align: right;">117</p> <p>1 J. KOHN</p> <p>2 knowledge as to how the individual amounts</p> <p>3 were developed?</p> <p>4 A. I do not have knowledge as to</p> <p>5 how the individual amounts were developed,</p> <p>6 although I saw some breakdown of them. So</p> <p>7 if there was a salary for a lawyer of</p> <p>8 \$5,000 a month, I didn't understand</p> <p>9 necessarily how they got to \$5,000, but I</p> <p>10 understood what that number was and</p> <p>11 acquiesced or agreed to the</p> <p>12 appropriateness of it.</p> <p>13 Q. Paying the person that amount?</p> <p>14 A. For that time period, yeah,</p> <p>15 right.</p> <p>16 And I would add, or just to</p> <p>17 supplement the descriptions in your</p> <p>18 questions, that some of those budgets of</p> <p>19 the Selva Viva budget was presented at</p> <p>20 least on certain occasions, Mr. Yanza also</p> <p>21 participated in those discussions in some</p> <p>22 of those.</p> <p>23 There were one or two occasions</p> <p>24 where he wasn't in the U.S. and we had</p> <p>25 some meetings, and they had, you know, a</p>

30 (Pages 114 to 117)

<p style="text-align: right;">118</p> <p>1 J. KOHN</p> <p>2 writing that laid out those budgets.</p> <p>3 Donziger was there and Mr. Yanza was also</p> <p>4 there, again speaking through translation</p> <p>5 to me.</p> <p>6 Q. Does Mr. Yanza speak English to</p> <p>7 your knowledge?</p> <p>8 A. Very, very little. I mean,</p> <p>9 hello, good morning, that sort of thing,</p> <p>10 but any substantive discussion was in</p> <p>11 Spanish.</p> <p>12 Q. In terms of setting salaries</p> <p>13 for the Ecuadorian lawyers other than</p> <p>14 Dr. Wray, did you act on the</p> <p>15 recommendation of Mr. Donziger or did you</p> <p>16 obtain any independent information on the</p> <p>17 salaries that Ecuadorian lawyers make?</p> <p>18 A. I relied on Mr. Donziger's</p> <p>19 recommendations, which appeared to be</p> <p>20 within the realm of reason, but we did not</p> <p>21 do a survey or any other investigation of</p> <p>22 salaries for Ecuadorian lawyers.</p> <p>23 There was a lawyer early on in</p> <p>24 the inspection matter who I understood was</p> <p>25 part of Alberto Wray's office, a woman</p>	<p style="text-align: right;">120</p> <p>1 J. KOHN</p> <p>2 or \$10,000 to someone, but I don't even</p> <p>3 have a recollection of that.</p> <p>4 But it is possible there could</p> <p>5 have been that kind of a bonus in those</p> <p>6 parameters.</p> <p>7 Q. To the extent there were</p> <p>8 conversations about potentially paying</p> <p>9 bonuses to Mr. Yanza or any of the</p> <p>10 Ecuadorian lawyers, those were</p> <p>11 conversations between yourself and</p> <p>12 Mr. Donziger?</p> <p>13 A. If they occurred, that's the</p> <p>14 way it would have occurred, if we were</p> <p>15 aware of them.</p> <p>16 Q. Do you recall receiving a bonus</p> <p>17 request directly from Mr. Yanza?</p> <p>18 A. No.</p> <p>19 Q. Do you recall ever receiving a</p> <p>20 bonus request directly from any of the</p> <p>21 Ecuadorian lawyers?</p> <p>22 A. No.</p> <p>23 Q. Mr. Donziger gave testimony</p> <p>24 about buying Mr. Yanza a house, providing</p> <p>25 him with \$12,000 to buy a house in 2007.</p>
<p style="text-align: right;">119</p> <p>1 J. KOHN</p> <p>2 named Monica, I do not remember her last</p> <p>3 name --</p> <p>4 Q. Pereja?</p> <p>5 A. Pereja. And she had made</p> <p>6 certain requests for a contract or a</p> <p>7 salary at a certain level which was more</p> <p>8 than what some of these other folks were</p> <p>9 making, so I had that form of comparison</p> <p>10 or basis of comparison. That was it.</p> <p>11 Q. In terms of Mr. Yanza's Selva</p> <p>12 Viva salary, did you have any comparisons</p> <p>13 for the value of the work that he was</p> <p>14 doing, independent from what Mr. Donziger</p> <p>15 provided you?</p> <p>16 A. No, ma'am.</p> <p>17 Q. Did Kohn Swift & Graf pay</p> <p>18 bonuses to Mr. Yanza at Mr. Donziger's</p> <p>19 recommendation?</p> <p>20 A. I don't remember anything</p> <p>21 specific, although, you know, it is</p> <p>22 possible that at some point there may have</p> <p>23 been, well, this has been going on for X</p> <p>24 number of years, and, you know, the end of</p> <p>25 this year, you know, can we pay another 5</p>	<p style="text-align: right;">121</p> <p>1 J. KOHN</p> <p>2 Were you involved in any</p> <p>3 discussions regarding giving Mr. Yanza</p> <p>4 \$12,000 to buy a house?</p> <p>5 A. I was not involved in any</p> <p>6 discussions about giving him such a bonus.</p> <p>7 There came a point where Donziger told me</p> <p>8 that he had done that. I think it came up</p> <p>9 in the context of some ancillary budget</p> <p>10 type discussions, and I said well, that</p> <p>11 was very nice of you to do, but that's not</p> <p>12 coming out of our budget.</p> <p>13 And I recall Mr. Donziger</p> <p>14 saying something to the effect of, you</p> <p>15 know, he had done this for Luis out of</p> <p>16 friendship, and, you know, kind of</p> <p>17 humanitarian reasons, but he also wanted</p> <p>18 it to be clear that he didn't want the</p> <p>19 other people working on the case to become</p> <p>20 aware of it, lest they also ask very</p> <p>21 similar treatment or feel that he was</p> <p>22 playing favorites or some such thing.</p> <p>23 Q. When you say the other people</p> <p>24 on the case, you mean the Ecuadorian</p> <p>25 lawyers?</p>

31 (Pages 118 to 121)

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<p style="text-align: right;">122</p> <p>1 J. KOHN</p> <p>2 A. Yes.</p> <p>3 Q. Was Mr. Donziger seeking to</p> <p>4 have Kohn Swift & Graf pay -- reimburse</p> <p>5 him the \$12,000 that he had given to</p> <p>6 Mr. Yanza?</p> <p>7 A. He was kind of elliptically</p> <p>8 getting to that, in other words, this is</p> <p>9 why, you know, quote, we are behind, or</p> <p>10 why there is, you know, overbudget or, you</p> <p>11 know, the budget that had been developed X</p> <p>12 months earlier was proving to be</p> <p>13 inadequate.</p> <p>14 And some things, you know,</p> <p>15 would occur, there are unexpected events</p> <p>16 in litigation, I understood some of that,</p> <p>17 or additional -- there was, you know, some</p> <p>18 inspections might have taken longer and</p> <p>19 what have you. But, you know, this one</p> <p>20 was one that I said, you know, take it out</p> <p>21 of your advances.</p> <p>22 Q. In connection with these</p> <p>23 discussions with Mr. Donziger, did you</p> <p>24 ever see any documents confirming that</p> <p>25 Mr. Yanza actually bought a house?</p>	<p style="text-align: right;">124</p> <p>1 J. KOHN</p> <p>2 exercising those kinds of decisions</p> <p>3 throughout the case. So I guess the short</p> <p>4 answer would be yes.</p> <p>5 Q. And throughout this time,</p> <p>6 Mr. Yanza was paid to act on behalf of the</p> <p>7 plaintiffs?</p> <p>8 A. During certain periods of time,</p> <p>9 yes.</p> <p>10 Q. In addition to being involved</p> <p>11 in legal discussions about the case, were</p> <p>12 you involved in discussions where</p> <p>13 Mr. Yanza was designated to take other</p> <p>14 acts on behalf of the plaintiffs such as</p> <p>15 organize PR events or interact with the</p> <p>16 Republic or other types of actions?</p> <p>17 MR. GOMEZ: Objection,</p> <p>18 compound.</p> <p>19 THE SPECIAL MASTER: I think</p> <p>20 the examples were needed. It is not</p> <p>21 compound. You may answer.</p> <p>22 A. I guess in a general way I was.</p> <p>23 Certainly the contacts with the officials</p> <p>24 or government or different agencies, I</p> <p>25 understood that he did some of that work.</p>
<p style="text-align: right;">123</p> <p>1 J. KOHN</p> <p>2 A. No, it was all just oral, just</p> <p>3 conversation.</p> <p>4 Q. Let me rephrase that.</p> <p>5 When you were in Ecuador, did</p> <p>6 you ever see this house Mr. Yanza had</p> <p>7 supposedly used the \$12,000 to buy?</p> <p>8 A. I do not believe so. No, I</p> <p>9 mean, it was not -- you know, I was in the</p> <p>10 one house, I assume it was not that house</p> <p>11 that was being used as the office. But</p> <p>12 there was no other effort was made to show</p> <p>13 it to me as far as I know.</p> <p>14 Q. During the time that Kohn Swift</p> <p>15 & Graf was involved in the 2003 Ecuador</p> <p>16 litigation, did you view Mr. Yanza as</p> <p>17 having authority to make decisions on</p> <p>18 behalf of the 48 individual plaintiffs?</p> <p>19 MR. GOMEZ: Objection, form.</p> <p>20 THE SPECIAL MASTER: The form</p> <p>21 is okay.</p> <p>22 A. Yeah, I viewed that he had</p> <p>23 decision-making authority by virtue of his</p> <p>24 position with the Frente on matters and</p> <p>25 that as well as that he had been</p>	<p style="text-align: right;">125</p> <p>1 J. KOHN</p> <p>2 There was communication with members of</p> <p>3 the Ecuadorian Parliament or Congresses.</p> <p>4 From time to time I believe he</p> <p>5 had some contact with that. I certainly</p> <p>6 understood he had contact with</p> <p>7 environmental organizations or NGOs. I</p> <p>8 understood he was involved with some, you</p> <p>9 know, the press conferences, these</p> <p>10 demonstrations or marches that would occur</p> <p>11 from time to time, you know, on behalf of</p> <p>12 the plaintiffs and his organization.</p> <p>13 I understood it all came from</p> <p>14 the pyramid, if you will, of the Frente,</p> <p>15 that he was acting as the Frente. The</p> <p>16 Frente included the indigenous tribal</p> <p>17 groups, the community groups, individuals,</p> <p>18 and that he acted as a spokesperson and a</p> <p>19 leader of that whole structure.</p> <p>20 Q. You understood that Selva Viva</p> <p>21 had bank accounts in Ecuador, correct?</p> <p>22 A. Right.</p> <p>23 Q. And Kohn Swift & Graf would</p> <p>24 transfer money from its bank accounts to</p> <p>25 the Selva Viva bank account from time to</p>

32 (Pages 122 to 125)

<p style="text-align: right;">126</p> <p>1 J. KOHN</p> <p>2 time?</p> <p>3 A. Correct.</p> <p>4 Q. What was your understanding as</p> <p>5 to who had control of the Selva Viva</p> <p>6 account, in other words, who was the</p> <p>7 signatory on that account?</p> <p>8 A. It was my understanding that it</p> <p>9 was Mr. Yanza. Again, there may have been</p> <p>10 other signatories, but he was in charge.</p> <p>11 Q. Did Kohn Swift & Graf ever do</p> <p>12 an audit of the Selva Viva bank accounts?</p> <p>13 A. No.</p> <p>14 Q. You understand that Selva Viva</p> <p>15 funds were used to pay Cabrera?</p> <p>16 A. I was aware of or was informed</p> <p>17 of certain payments that were being made</p> <p>18 and was always represented to me by</p> <p>19 Donziger that these were part of the</p> <p>20 litigation process in Ecuador whereby if a</p> <p>21 party demands or requests that expertise</p> <p>22 or that expert, that that party was</p> <p>23 required to pay for that time and that it</p> <p>24 was being done through the court, that the</p> <p>25 court ordered it, that the court required</p>	<p style="text-align: right;">128</p> <p>1 J. KOHN</p> <p>2 the effect, he didn't make a big deal out</p> <p>3 of it, but, you know, we know the</p> <p>4 plaintiffs are influencing Cabrera.</p> <p>5 Later, after we broke up with</p> <p>6 Mr. Cullen, I asked Mr. Donziger, you</p> <p>7 know, what's he talking about? He said,</p> <p>8 well, they had some motion that they had</p> <p>9 filed, that they, Chevron, in Ecuador</p> <p>10 where they attached a check payable to</p> <p>11 Mr. Cabrera and filed it, but it was the</p> <p>12 court-permitted payment to the expert, and</p> <p>13 he sort of laughed, ha ha, and like that's</p> <p>14 all.</p> <p>15 I said, that's all it is? I</p> <p>16 said, well, that's kind of, you know, and</p> <p>17 then the second piece of his explanation</p> <p>18 was that during Mr. Cabrera's work he was</p> <p>19 photographed or seen in the presence of</p> <p>20 some of the plaintiffs at a well site,</p> <p>21 when he was out in the field doing some</p> <p>22 kind of work, and according to Donziger,</p> <p>23 Donziger stating, and Chevron is making a</p> <p>24 big deal of this because they are saying</p> <p>25 they saw him in the presence of the</p>
<p style="text-align: right;">127</p> <p>1 J. KOHN</p> <p>2 it, and that was the procedure.</p> <p>3 MR. GOMEZ: I'm sorry, the last</p> <p>4 word, was that "required"?</p> <p>5 THE WITNESS: The court</p> <p>6 required it and that that was the</p> <p>7 procedure.</p> <p>8 Q. Did Mr. Donziger ever discuss</p> <p>9 with you at any time making payments to</p> <p>10 Mr. Cabrera outside the court process,</p> <p>11 payments that were not approved by the</p> <p>12 court?</p> <p>13 A. Absolutely not. And, if</p> <p>14 anything, the contrary was expressed, when</p> <p>15 there were criticisms of Cabrera being</p> <p>16 made by Chevron, and I believe at one time</p> <p>17 there was a specific question or comment</p> <p>18 made by one of Chevron's attorneys to</p> <p>19 Donziger and myself, I later asked him</p> <p>20 about Cabrera, saying there was some</p> <p>21 influence or something -- the comment as I</p> <p>22 recall was from Mr. Cullen at a meeting</p> <p>23 that I had with him at the Jones Day firm.</p> <p>24 Q. Tim Cullen?</p> <p>25 A. Yes. And he said something to</p>	<p style="text-align: right;">129</p> <p>1 J. KOHN</p> <p>2 plaintiffs when all it was was he was out</p> <p>3 doing his fieldwork and that's where those</p> <p>4 people live and a couple of them came to</p> <p>5 observe him there. And that was the end</p> <p>6 of that discussion.</p> <p>7 There was a later comment along</p> <p>8 the same lines from Mr. Cullen and</p> <p>9 Mr. James at a meeting that I had with</p> <p>10 them later, again, asked Donziger the same</p> <p>11 questions, what are they talking about?</p> <p>12 The same answers with respect to well,</p> <p>13 they saw Cabrera with some of the</p> <p>14 plaintiffs at this well site.</p> <p>15 And I believe there was maybe</p> <p>16 even a third conversation at or about the</p> <p>17 time of the November '07 mediation.</p> <p>18 Q. So I have the timing right, you</p> <p>19 have mentioned three conversations.</p> <p>20 The first one involved just</p> <p>21 you, Mr. Cullen and Mr. Donziger; is that</p> <p>22 right?</p> <p>23 A. I can't be 100 percent sure if</p> <p>24 it was just Mr. Cullen and me or whether</p> <p>25 it was -- whether Donziger was also -- it</p>

33 (Pages 126 to 129)

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<p style="text-align: right;">130</p> <p>1 J. KOHN</p> <p>2 is possible that a reference by Mr. Cullen</p> <p>3 may have been made just to me.</p> <p>4 Q. That conversation, when was</p> <p>5 that one?</p> <p>6 A. My recollection is it would</p> <p>7 have been sometime in 2007 prior to the</p> <p>8 November '07 mediation. Whether it was --</p> <p>9 I had three or four meetings with</p> <p>10 Mr. Cullen in that time frame. I think</p> <p>11 the first one was in February '07. I</p> <p>12 think there was one towards the end of</p> <p>13 March '07. There was one July '07. So it</p> <p>14 could have been in any of those meetings.</p> <p>15 Q. And was that the first</p> <p>16 conversation on this issue of payments to</p> <p>17 Cabrera that you had with Mr. Donziger?</p> <p>18 A. The first one I can remember,</p> <p>19 yeah.</p> <p>20 Q. The next one that included</p> <p>21 Mr. James?</p> <p>22 A. That was in February of 2009.</p> <p>23 Q. February of 2009?</p> <p>24 A. '09, yes, after the Cabrera</p> <p>25 report was issued by that time.</p>	<p style="text-align: right;">132</p> <p>1 J. KOHN</p> <p>2 breakout conference room, similar to the</p> <p>3 setup here, with Donziger, Mr. Fajardo,</p> <p>4 Mr. Yanza was also present at the</p> <p>5 mediation, there were several other</p> <p>6 plaintiffs, and I inquired what is he</p> <p>7 talking about? The same explanation, oh,</p> <p>8 it is the same old stuff about the one</p> <p>9 check that they have found and/or the</p> <p>10 photographs at the well site.</p> <p>11 I have a pretty clear</p> <p>12 recollection that at that time I said,</p> <p>13 look, if there is anything going on, they</p> <p>14 are going to find out about it and don't</p> <p>15 think you can keep some secrets.</p> <p>16 Absolutely, this is all BS,</p> <p>17 this is all just, you know, Chevron thinks</p> <p>18 they are going to lose and they are just</p> <p>19 looking for excuses. That is what</p> <p>20 Donziger said.</p> <p>21 Mr. Fajardo was there. I don't</p> <p>22 know whether he could understand the</p> <p>23 English. We were having that conversation</p> <p>24 in English.</p> <p>25 Q. Was anyone translating for</p>
<p style="text-align: right;">131</p> <p>1 J. KOHN</p> <p>2 Q. And who participated in that</p> <p>3 conversation?</p> <p>4 A. Mr. James and Mr. Cullen for</p> <p>5 Chevron, Mr. Ben Barnes and myself for the</p> <p>6 plaintiffs.</p> <p>7 Q. Was there a third conversation?</p> <p>8 A. I have another recollection of</p> <p>9 a conversation in connection with the</p> <p>10 November '07 mediation.</p> <p>11 Mr. Cullen was accompanied by</p> <p>12 Mr. Scott from Chevron at that mediation</p> <p>13 as well as other Jones Day lawyers, and I</p> <p>14 have a recollection of Mr. Cullen -- at</p> <p>15 that point in time the Cabrera report had</p> <p>16 not been issued, but the study was under</p> <p>17 way, that he was denigrating in some way</p> <p>18 Cabrera or Cabrera's independence or the</p> <p>19 fact that the plaintiffs were influencing</p> <p>20 Cabrera in some way.</p> <p>21 Q. Who is "he"?</p> <p>22 A. Mr. Cullen was making that</p> <p>23 comment. Again, it wasn't a big deal. He</p> <p>24 wasn't waving his arms. It was just</p> <p>25 stated. I recall discussion then out in a</p>	<p style="text-align: right;">133</p> <p>1 J. KOHN</p> <p>2 Mr. Fajardo at that time?</p> <p>3 A. I don't recall that specific</p> <p>4 breakout conversation being translated,</p> <p>5 you know, in real-time. Again, whether</p> <p>6 people huddled later and I was someplace</p> <p>7 else or not, but I don't remember that</p> <p>8 being translated.</p> <p>9 Q. In this conversation in the</p> <p>10 breakout room in November 2007, you</p> <p>11 specifically asked Mr. Donziger if</p> <p>12 Mr. Cabrera had been paid outside the</p> <p>13 court process and he specifically denied</p> <p>14 it; is that right?</p> <p>15 A. I didn't ask it the way you</p> <p>16 phrased it, has he been paid outside of</p> <p>17 the court process. I asked a more</p> <p>18 open-ended general question, what is Tim,</p> <p>19 or Mr. Cullen, referring to?</p> <p>20 And I also have a recollection,</p> <p>21 again, I may be off on the timing, that</p> <p>22 Chevron was very public in its criticism</p> <p>23 of Cabrera during the whole process, that</p> <p>24 there may have even been advertisements in</p> <p>25 the newspaper or columns or press releases</p>

34 (Pages 130 to 133)

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<p style="text-align: right;">134</p> <p>1 J. KOHN</p> <p>2 that the whole Cabrera process was</p> <p>3 improper and tainted. So, you know, it</p> <p>4 was sort of out there in the litigation.</p> <p>5 It was an issue.</p> <p>6 And I was asking, you know,</p> <p>7 what are they talking about? Is there</p> <p>8 anything to this? And it was always</p> <p>9 dismissed in the way I have described it.</p> <p>10 But I don't think I asked the specific</p> <p>11 question, you know, are you sure you are</p> <p>12 not making payments to him outside of the</p> <p>13 court process?</p> <p>14 But he did refer to the one</p> <p>15 payment that had been brought up, that it</p> <p>16 was all -- all it was was the payment</p> <p>17 going right through the court and exactly</p> <p>18 as required by the process in Ecuador.</p> <p>19 Q. Were you aware at this time in</p> <p>20 November of 2007 that Chevron had filed</p> <p>21 multiple formal objections on the record</p> <p>22 in Ecuador to what it believed were</p> <p>23 improper interactions between Cabrera and</p> <p>24 the plaintiffs' team?</p> <p>25 A. In a general way, I think as I</p>	<p style="text-align: right;">136</p> <p>1 J. KOHN</p> <p>2 There was a meeting in late</p> <p>3 March or April of 2010, again, this was</p> <p>4 after our firm had sent a letter</p> <p>5 withdrawing as counsel. Mr. Fajardo,</p> <p>6 Mr. Yanza and I believe Mr. Humberto</p> <p>7 Piaguaje came to the U.S., came to our</p> <p>8 office, and Chevron had already begun the</p> <p>9 1782 discovery proceedings, and I asked at</p> <p>10 that time, you know, about what you folks</p> <p>11 were uncovering primarily in the</p> <p>12 proceeding in Denver against Stratus.</p> <p>13 Q. Humberto Piaguaje, he is not a</p> <p>14 named plaintiff, correct?</p> <p>15 A. I would have to look. It is</p> <p>16 certainly my understanding that he was a</p> <p>17 plaintiff in the original New York action,</p> <p>18 and I don't recall whether he was then one</p> <p>19 in the Ecuador action or not. I mean, I</p> <p>20 could look at the list.</p> <p>21 Q. Do you know how the 48</p> <p>22 plaintiffs were determined, how it was</p> <p>23 determined who would be the named</p> <p>24 plaintiffs?</p> <p>25 A. No.</p>
<p style="text-align: right;">135</p> <p>1 J. KOHN</p> <p>2 have just alluded to, I understand it was</p> <p>3 public, the criticism of Cabrera was</p> <p>4 public. I was not shown or did not</p> <p>5 receive copies of those -- of specific</p> <p>6 motions, although much later in the time</p> <p>7 frame, in the '09 time frame I'm sure you</p> <p>8 have seen some of the e-mails when our</p> <p>9 firm was attempting to obtain precisely</p> <p>10 that kind of information, let's see what</p> <p>11 the full record is, let's see what the</p> <p>12 pleadings are in all these matters.</p> <p>13 But I was aware, again, of the</p> <p>14 criticism. Mr. Cullen voiced it at the</p> <p>15 mediation. It was in the press.</p> <p>16 Q. Did you ever have any</p> <p>17 conversations directly with Mr. Fajardo</p> <p>18 about Mr. Cabrera and Chevron's</p> <p>19 allegations that the plaintiffs' team were</p> <p>20 inappropriately interacting with</p> <p>21 Mr. Cabrera?</p> <p>22 A. Well, other than, you know,</p> <p>23 there was the one I referenced, he was</p> <p>24 there. Again, we were not speaking the</p> <p>25 same language.</p>	<p style="text-align: right;">137</p> <p>1 J. KOHN</p> <p>2 Q. In your meeting in April of</p> <p>3 2010, was it your understanding that</p> <p>4 Mr. Piaguaje, Humberto Piaguaje, was</p> <p>5 participating either as a plaintiff or a</p> <p>6 plaintiff representative?</p> <p>7 A. Yes, either a plaintiff or a</p> <p>8 plaintiff representative.</p> <p>9 Q. Was there anybody else in this</p> <p>10 meeting --</p> <p>11 A. Or more precisely, I understood</p> <p>12 he was there as a plaintiff</p> <p>13 representative. He may also have been a</p> <p>14 plaintiff. But it was clear that for part</p> <p>15 of the meeting that the plaintiff</p> <p>16 representatives were there.</p> <p>17 Q. The April 2010 --</p> <p>18 A. Again, it was either March or</p> <p>19 April 2010.</p> <p>20 Q. -- meeting, anyone else</p> <p>21 participate other than yourself,</p> <p>22 Mr. Donziger, Mr. Yanza and Mr. Piaguaje?</p> <p>23 A. Donziger was not there.</p> <p>24 Q. Oh, Donziger did not</p> <p>25 participate in the meeting?</p>

35 (Pages 134 to 137)

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<p style="text-align: right;">138</p> <p>1 J. KOHN</p> <p>2 A. No, ma'am.</p> <p>3 Q. And who translated -- well, I</p> <p>4 take it the conversation between yourself</p> <p>5 and Mr. Yanza and Mr. Fajardo were</p> <p>6 translated; is that right?</p> <p>7 A. Correct.</p> <p>8 Q. And who did the translation?</p> <p>9 A. A paralegal in our office who</p> <p>10 was there at that time, but is no longer</p> <p>11 in our office. Her name is Sofia Lopez.</p> <p>12 Q. Was there anybody else present</p> <p>13 during this meeting in April 2010?</p> <p>14 A. Mr. Hillwig and Mr. Glazer from</p> <p>15 our firm were also there.</p> <p>16 Q. Do either of those gentlemen</p> <p>17 speak Spanish?</p> <p>18 A. Certainly not fluently.</p> <p>19 Q. Do you know if they speak it at</p> <p>20 all?</p> <p>21 A. I really don't. I just sort of</p> <p>22 have a suspicion that Mr. Glazer may have</p> <p>23 had high school Spanish equivalent to my</p> <p>24 high school French.</p> <p>25 Q. This meeting was in your</p>	<p style="text-align: right;">140</p> <p>1 J. KOHN</p> <p>2 Q. And was there a reason that</p> <p>3 Mr. Donziger was not participating in the</p> <p>4 meeting?</p> <p>5 A. Well, from my perspective, I</p> <p>6 had no intention of meeting with him</p> <p>7 further. I had had a discussion about</p> <p>8 three weeks or a month earlier at his</p> <p>9 request at the Susman Godfrey law firm in</p> <p>10 New York, which our firm had retained in</p> <p>11 the fall of 2009, and I had stated my</p> <p>12 position relative to him at that time.</p> <p>13 So this was something that the</p> <p>14 Ecuadorian folks who I mentioned there</p> <p>15 were coming to talk to our firm</p> <p>16 separately.</p> <p>17 MS. NEUMAN: I want to show the</p> <p>18 witness a document that we are going to</p> <p>19 mark as Exhibit 4004. It is a four-page</p> <p>20 document bearing the Bates numbers</p> <p>21 KSG00055094 through 55097.</p> <p>22 (Plaintiff's Exhibit 4004</p> <p>23 marked for identification.)</p> <p>24 Q. Mr. Kohn, do you recognize</p> <p>25 Exhibit 4004?</p>
<p style="text-align: right;">139</p> <p>1 J. KOHN</p> <p>2 offices in Philadelphia?</p> <p>3 A. Yes.</p> <p>4 Q. How long did the meeting last?</p> <p>5 A. About an hour and a half.</p> <p>6 Q. What was the purpose of the</p> <p>7 meeting?</p> <p>8 A. The meeting was requested by</p> <p>9 Mr. Fajardo and Mr. Yanza and Mr. Piaguaje</p> <p>10 ultimately as a result of the letter I</p> <p>11 sent in November 2009. It was my</p> <p>12 understanding that they were in the United</p> <p>13 States for the purpose of having other</p> <p>14 meetings with Donziger and I assumed at</p> <p>15 the time other law firms. It was just my</p> <p>16 assumption. They did not tell me that.</p> <p>17 They did tell me that they had</p> <p>18 some time in their schedule and that they</p> <p>19 were headed to New York after the time we</p> <p>20 would spend in Philadelphia. And the</p> <p>21 purpose was to discuss the case going</p> <p>22 forward and whether our firm had any</p> <p>23 interest to reinvolve ourselves or to</p> <p>24 participate in some way in the case going</p> <p>25 forward.</p>	<p style="text-align: right;">141</p> <p>1 J. KOHN</p> <p>2 A. Yes, I do.</p> <p>3 Q. What is it?</p> <p>4 A. It is handwritten notes of the</p> <p>5 meeting in our office, which, according to</p> <p>6 this document, says was April 29th, 2010,</p> <p>7 which were produced by our firm, which</p> <p>8 were in our firm's files, and I'm not</p> <p>9 certain whether these are the notes of</p> <p>10 Mr. Hilwig or of Mr. Glazer.</p> <p>11 There is a reference to</p> <p>12 Mr. Glazer's initials on the bottom of</p> <p>13 page 2, which might indicate that it is</p> <p>14 Mr. Hilwig's notes, and he is referring to</p> <p>15 a third person. On the other hand, it is</p> <p>16 sort of a summary -- could have also been</p> <p>17 Mr. Glazer just noting, he referring to</p> <p>18 himself by his own initials and what he</p> <p>19 stated at the time.</p> <p>20 Q. In either event, Exhibit 4004</p> <p>21 is not in your handwriting?</p> <p>22 A. That's right, it is not my</p> <p>23 handwriting.</p> <p>24 Q. In the April -- let me withdraw</p> <p>25 that.</p>

36 (Pages 138 to 141)

<p style="text-align: right;">142</p> <p>1 J. KOHN</p> <p>2 Did you have any other -- did</p> <p>3 you only have one meeting with Mr. Fajardo</p> <p>4 and Mr. Yanza and Mr. Piaguaje in the</p> <p>5 March/April 2010 time frame?</p> <p>6 A. Yes, just the one meeting.</p> <p>7 Q. And does Exhibit 4004, although</p> <p>8 not your notes, refresh your recollection</p> <p>9 that the meeting occurred on April 29th of</p> <p>10 2010?</p> <p>11 A. You know, not really. I see</p> <p>12 that. I don't have any reason to doubt</p> <p>13 the accuracy of it. But my recollection</p> <p>14 would still be it was March or April. But</p> <p>15 I see it there.</p> <p>16 Q. During the meeting that you had</p> <p>17 in the spring of 2010 with Mr. Fajardo and</p> <p>18 Mr. Yanza, did you discuss the topic of</p> <p>19 Richard Cabrera?</p> <p>20 A. I'm not even sure if I remember</p> <p>21 the name Cabrera coming up. I do remember</p> <p>22 at a point, because the information or the</p> <p>23 litigation relative to Stratus in Denver</p> <p>24 was ongoing at that time, there had been</p> <p>25 some issues that had come out, others that</p>	<p style="text-align: right;">144</p> <p>1 J. KOHN</p> <p>2 to happen or coming out with respect to</p> <p>3 the discovery from Stratus. We were</p> <p>4 speaking through a translator, so some of</p> <p>5 this was kind of slow going.</p> <p>6 Mr. Fajardo's response was it</p> <p>7 is nothing. The court in Ecuador, there</p> <p>8 is a court order that allowed the parties</p> <p>9 to exchange information or provide expert</p> <p>10 materials to -- I don't know if the name</p> <p>11 Cabrera was used -- but to the</p> <p>12 court-appointed expert, and that's that.</p> <p>13 And I said well, if that's all</p> <p>14 there is to it, then why haven't you and</p> <p>15 your great lawyer, Mr. Donziger, filed a</p> <p>16 short motion with the court in Denver that</p> <p>17 attaches that order and says what are they</p> <p>18 talking about, we have an absolute right</p> <p>19 under Ecuadorian procedures and here is a</p> <p>20 court order that allows us to do such a</p> <p>21 thing.</p> <p>22 MR. GOMEZ: Objection. I'm</p> <p>23 going to move to strike this as</p> <p>24 nonresponsive. The question was</p> <p>25 whether --</p>
<p style="text-align: right;">143</p> <p>1 J. KOHN</p> <p>2 would come out later, or facts that would</p> <p>3 come out later.</p> <p>4 So I remember referring to the</p> <p>5 Denver case or the issue of Stratus</p> <p>6 providing material to Cabrera, and I</p> <p>7 recall that coming sort of later in the</p> <p>8 time that either I was speaking or sort of</p> <p>9 walking through chronologically some</p> <p>10 issues that I had become aware of and</p> <p>11 asking to the effect, you know, what, you</p> <p>12 know, what's going on, you know, you need</p> <p>13 to tell us anything -- the premise of the</p> <p>14 meeting was they wanted to move forward,</p> <p>15 did our firm want to reengage in the case</p> <p>16 and be part of some sort of committee or</p> <p>17 team of counsel.</p> <p>18 I said well, first of all, you</p> <p>19 know, I had a series of things, I would</p> <p>20 not do anything, get involved in any case</p> <p>21 that Donziger was still involved in.</p> <p>22 Number two, I said you would have to tell</p> <p>23 us and explain to us everything that has</p> <p>24 happened. We need a full understanding of</p> <p>25 the record and particularly what is going</p>	<p style="text-align: right;">145</p> <p>1 J. KOHN</p> <p>2 THE SPECIAL MASTER: I see what</p> <p>3 the question is. No, he answered it in</p> <p>4 his own way.</p> <p>5 Q. Mr. Kohn, could you --</p> <p>6 THE SPECIAL MASTER: It is not</p> <p>7 irrelevant to the question.</p> <p>8 Q. After you said to Mr. Fajardo</p> <p>9 why don't you and Mr. Donziger just file a</p> <p>10 motion in Denver that provides the</p> <p>11 Ecuadorian court order and confirms that</p> <p>12 any action you had with Mr. Cabrera was</p> <p>13 appropriate, how did Mr. Fajardo respond?</p> <p>14 MR. GOMEZ: Objection,</p> <p>15 privileged.</p> <p>16 THE SPECIAL MASTER: Let me</p> <p>17 hear the answer and then I will rule.</p> <p>18 A. He responded very briefly, kind</p> <p>19 of a well, maybe we will, maybe we should,</p> <p>20 but it was kind of a look down at your</p> <p>21 shoes and move along to other issues, but</p> <p>22 kind of a, you know, we are, you know,</p> <p>23 maybe we should, or we are considering our</p> <p>24 options, but nothing more detailed than</p> <p>25 that.</p>

37 (Pages 142 to 145)

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<p style="text-align: right;">146</p> <p>1 J. KOHN</p> <p>2 Q. In the 2010 conversation that</p> <p>3 you had --</p> <p>4 MR. GOMEZ: Sorry, move to</p> <p>5 strike.</p> <p>6 THE SPECIAL MASTER: No, no,</p> <p>7 no. This is part and parcel of the</p> <p>8 statement that the witness has described</p> <p>9 which is clearly in furtherance of the</p> <p>10 fraud that has been found -- excuse me, it</p> <p>11 is in furtherance of the fraud. The</p> <p>12 statement that this is all pursuant to a</p> <p>13 court order is exactly the cover-up that</p> <p>14 was being used in the Fajardo affidavit</p> <p>15 that went to the court in Denver, and this</p> <p>16 is part and parcel of it. No, it is not</p> <p>17 privileged.</p> <p>18 Q. Mr. Kohn, were you or Kohn</p> <p>19 Swift & Graf counsel to the plaintiffs at</p> <p>20 this time, April 2010?</p> <p>21 A. I considered that we were</p> <p>22 former counsel and operating under</p> <p>23 whatever requirements there are with</p> <p>24 respect to former clients, but the letter</p> <p>25 I sent in November '09 indicated that</p>	<p style="text-align: right;">148</p> <p>1 J. KOHN</p> <p>2 by either Mr. Fajardo or Mr. Yanza as to</p> <p>3 whether or not Stratus had had meetings</p> <p>4 with Mr. Cabrera?</p> <p>5 A. We didn't discuss meetings that</p> <p>6 I can recall.</p> <p>7 Q. Were there any statements made</p> <p>8 by either Mr. Fajardo or Mr. Yanza in this</p> <p>9 meeting as to whether or not Stratus was</p> <p>10 the primary author of Mr. Cabrera's</p> <p>11 report?</p> <p>12 A. Nope.</p> <p>13 Q. Did either Mr. Yanza or</p> <p>14 Mr. Fajardo indicate in this meeting that</p> <p>15 they thought you knew that Stratus had</p> <p>16 written Cabrera's report?</p> <p>17 A. No, and, again, sort of in</p> <p>18 hindsight it is quite the contrary, there</p> <p>19 was this whatever is done is perfectly</p> <p>20 legal under the Ecuadorian system and</p> <p>21 there is an order that allowed submission</p> <p>22 of materials either to the court or to the</p> <p>23 expert for the expert to look at and</p> <p>24 consider in his work.</p> <p>25 And it certainly would have</p>
<p style="text-align: right;">147</p> <p>1 J. KOHN</p> <p>2 unless or until other understandings and</p> <p>3 agreements and disclosures were made, that</p> <p>4 our firm was withdrawing and we acted upon</p> <p>5 that and did not take any other action.</p> <p>6 I had some other letters that I</p> <p>7 sent as some of these revelations started</p> <p>8 developing in the 1782 discovery, but I</p> <p>9 viewed them as sending them to former</p> <p>10 clients.</p> <p>11 Q. During this April 2010 meeting</p> <p>12 with Fajardo and Yanza, was there any</p> <p>13 discussion as to whether the plaintiffs'</p> <p>14 team in Ecuador had ever had any private,</p> <p>15 secret meetings with Mr. Cabrera?</p> <p>16 A. No. It was pretty much limited</p> <p>17 -- the issue of Cabrera was pretty much</p> <p>18 limited as I described, you would need to</p> <p>19 tell us, you would need to make a full</p> <p>20 disclosure as to whatever relations, and I</p> <p>21 was focusing on the Stratus piece of it at</p> <p>22 that time, and I have already testified as</p> <p>23 to what I can remember about that. I</p> <p>24 don't remember any more detail than that.</p> <p>25 Q. Were there any statements made</p>	<p style="text-align: right;">149</p> <p>1 J. KOHN</p> <p>2 been an opportunity to say, you know, Joe,</p> <p>3 what are you talking about? Don't you</p> <p>4 know that we, you know, had meetings with</p> <p>5 Cabrera and Stratus did and that's all</p> <p>6 fine? But that is not what was said.</p> <p>7 MS. NEUMAN: I'm going to hand</p> <p>8 the witness a document that I'm going to</p> <p>9 mark as Exhibit 4005.</p> <p>10 (Plaintiff's Exhibit 4005</p> <p>11 marked for identification.)</p> <p>12 MS. NEUMAN: It is an e-mail</p> <p>13 from Pablo Fajardo to Joseph Kohn dated</p> <p>14 Saturday, May 1st, 2010, which is then</p> <p>15 forwarded by Mr. Kohn to Sofia Lopez, with</p> <p>16 a request that it be translated.</p> <p>17 Ms. Lopez then forwards a</p> <p>18 translation to Mr. Kohn, which Mr. Kohn</p> <p>19 then forwards to Mr. Hillwig and</p> <p>20 Mr. Glazer.</p> <p>21 The document bears the Bates</p> <p>22 numbers KSG00028684 through KSG00028686.</p> <p>23 Q. Mr. Kohn, could you take a look</p> <p>24 at Exhibit 4005 and let me know when</p> <p>25 you've had a chance to read it.</p>

38 (Pages 146 to 149)

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<p style="text-align: right;">150</p> <p>1 J. KOHN</p> <p>2 (Witness perusing document.)</p> <p>3 A. Okay, I have had a chance to</p> <p>4 look at it.</p> <p>5 Q. Do you recall receiving Exhibit</p> <p>6 4005 from Mr. Fajardo on or about May 3rd</p> <p>7 of 2010?</p> <p>8 MR. GOMEZ: Objection, form.</p> <p>9 THE SPECIAL MASTER: I'm sorry,</p> <p>10 what was that?</p> <p>11 MR. GOMEZ: Objection, form.</p> <p>12 MS. HAMILL: It is May 1st.</p> <p>13 Did you say May 3rd?</p> <p>14 MS. NEUMAN: I'm sorry, let me</p> <p>15 rephrase it.</p> <p>16 Q. Do you recall receiving the</p> <p>17 original e-mail that's written in Spanish</p> <p>18 and dated May 1st, 2010 from Mr. Fajardo</p> <p>19 on or about that date?</p> <p>20 A. I recall receiving it after the</p> <p>21 meeting in our office, and, again, seeing</p> <p>22 these dates, I still think the meeting was</p> <p>23 March or April, but yes, I recall</p> <p>24 receiving this e-mail shortly after the</p> <p>25 meeting.</p>	<p style="text-align: right;">152</p> <p>1 J. KOHN</p> <p>2 didn't know whether -- or he contended it</p> <p>3 was submitted, to be more precise, through</p> <p>4 some sort of court process.</p> <p>5 Whether that process said you</p> <p>6 must file it with what we would call the</p> <p>7 clerk of the court and then provide copies</p> <p>8 to the expert or whether you were simply</p> <p>9 allowed to send it directly to the expert</p> <p>10 under this procedure that they were</p> <p>11 describing, I didn't draw that</p> <p>12 distinction.</p> <p>13 But I understood that he was</p> <p>14 representing that information had been</p> <p>15 provided in an appropriate, legal manner</p> <p>16 under their procedures.</p> <p>17 Q. The order that Mr. Fajardo had</p> <p>18 referred to in your in-person meeting and</p> <p>19 then refers to again in this e-mail as</p> <p>20 "the same order," did you ask to see that</p> <p>21 order?</p> <p>22 A. I'm pretty sure I did at the</p> <p>23 meeting, or at least certainly implied</p> <p>24 with the conversation about, well, if</p> <p>25 that's such a simple matter, why don't you</p>
<p style="text-align: right;">151</p> <p>1 J. KOHN</p> <p>2 Q. In this e-mail, Mr. Fajardo</p> <p>3 states, as translated by Ms. Lopez, "I was</p> <p>4 remembering some of the information we</p> <p>5 shared regarding the process in Ecuador</p> <p>6 and considering the possible scenarios by</p> <p>7 which Chevron could try to delegitimize</p> <p>8 the Cabrera report. I think I did not</p> <p>9 mention this detail. Based on the same</p> <p>10 order of the judge by which we submitted</p> <p>11 information to Expert Cabrera, we</p> <p>12 proceeded to submit a packet of</p> <p>13 information, mainly the input of Stratus,</p> <p>14 around the middle of March 2008."</p> <p>15 Do you see that?</p> <p>16 A. Yes, I do.</p> <p>17 Q. Was it your understanding when</p> <p>18 you received this e-mail from Mr. Fajardo</p> <p>19 that he was representing to you that the</p> <p>20 plaintiffs had submitted a packet of</p> <p>21 information mainly from Stratus to</p> <p>22 Mr. Cabrera through the court or</p> <p>23 privately?</p> <p>24 A. I understood that it was</p> <p>25 submitted pursuant to a court order. I</p>	<p style="text-align: right;">153</p> <p>1 J. KOHN</p> <p>2 pull that order out and give it to the</p> <p>3 judge in Denver and put an end to the 1782</p> <p>4 discovery.</p> <p>5 So I don't remember if it came</p> <p>6 up, you know, do you have that with you,</p> <p>7 could we look at it right now, if it got</p> <p>8 into that detail. There was certainly a</p> <p>9 sense -- the opportunity was there if they</p> <p>10 wanted to -- or if he wanted to explain</p> <p>11 further that he could have pulled the</p> <p>12 document out, the order rather, the</p> <p>13 alleged order, out of his briefcase and</p> <p>14 gone through it with us right there. That</p> <p>15 opportunity was presented.</p> <p>16 Q. Were you ever provided the</p> <p>17 order Mr. Fajardo was referring to by</p> <p>18 Mr. Fajardo?</p> <p>19 A. I don't recall getting it, but</p> <p>20 it is conceivable. I don't recall. I</p> <p>21 don't recall.</p> <p>22 Q. You don't recall the order or</p> <p>23 what it might have said; is that right?</p> <p>24 A. That's right.</p> <p>25 Q. Are the statements that</p>

39 (Pages 150 to 153)

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<p style="text-align: right;">154</p> <p>1 J. KOHN</p> <p>2 Mr. Fajardo makes in his e-mail contained</p> <p>3 in Exhibit 4005 as translated for you</p> <p>4 consistent with the information he gave</p> <p>5 you in the meeting?</p> <p>6 A. I'm sorry, I lost the last part</p> <p>7 of your question.</p> <p>8 Q. The representations he makes in</p> <p>9 the e-mail, although they have more</p> <p>10 detail, are they consistent with the</p> <p>11 representations he made in your in-person</p> <p>12 meeting?</p> <p>13 A. Well, to a certain extent,</p> <p>14 although now he is providing some</p> <p>15 additional -- you know, he did not</p> <p>16 reference, you know, what he now calls the</p> <p>17 packet of information from Stratus. He</p> <p>18 did not give any specificity about some</p> <p>19 March 2008 packet.</p> <p>20 It was more just this general</p> <p>21 notion that under the Ecuadorian</p> <p>22 procedure, the independent expert is</p> <p>23 allowed to obtain or receive or review</p> <p>24 information that the parties submit, and</p> <p>25 that's the way it is done in Ecuador and</p>	<p style="text-align: right;">156</p> <p>1 J. KOHN</p> <p>2 nothing -- I did not have a conversation</p> <p>3 that I can recall with Mr. Fajardo after</p> <p>4 the meeting on April 29th.</p> <p>5 Q. Did you have any conversations</p> <p>6 with Mr. Yanza after the meeting in April</p> <p>7 of 2010?</p> <p>8 A. No. Again, some</p> <p>9 correspondence, but no conversations that</p> <p>10 I can remember.</p> <p>11 Q. Were there any other</p> <p>12 representations that Mr. Fajardo made to</p> <p>13 you about the plaintiffs' team's</p> <p>14 interactions with Cabrera that you recall?</p> <p>15 MR. GOMEZ: Objection, time</p> <p>16 frame.</p> <p>17 MS. NEUMAN: At any time.</p> <p>18 A. Not beyond what I have already</p> <p>19 testified to.</p> <p>20 THE SPECIAL MASTER: Wait a</p> <p>21 second. Let's get specific here. Are you</p> <p>22 talking about the same meeting? Mr. Gomez</p> <p>23 is right.</p> <p>24 MS. NEUMAN: No, separate from</p> <p>25 the meeting, were there other</p>
<p style="text-align: right;">155</p> <p>1 J. KOHN</p> <p>2 that's the way it has always been done and</p> <p>3 it is simple. He did not get into the</p> <p>4 specificity about a particular packet or a</p> <p>5 particular date.</p> <p>6 So this was providing</p> <p>7 additional information further along the</p> <p>8 line, but not inconsistent, but it was</p> <p>9 some further explication of his contention</p> <p>10 as to the process.</p> <p>11 Q. Did you have any conversations</p> <p>12 with Mr. Fajardo after you received his</p> <p>13 e-mail in Exhibit 4005?</p> <p>14 A. I had no other conversations</p> <p>15 that I can recall. There was some further</p> <p>16 correspondence both I think from our firm</p> <p>17 and ultimately whether it was from</p> <p>18 Mr. Fajardo or from plaintiffs to our</p> <p>19 firm.</p> <p>20 I spoke to some guy named</p> <p>21 Economou who came to our office</p> <p>22 purportedly as a representative of the</p> <p>23 plaintiffs.</p> <p>24 Q. Nicolas Economou of H5?</p> <p>25 A. Yes. Again, whether he -- but</p>	<p style="text-align: right;">157</p> <p>1 J. KOHN</p> <p>2 representations made to Mr. Kohn by</p> <p>3 Mr. Fajardo about Mr. Cabrera and the</p> <p>4 plaintiffs' interactions with him.</p> <p>5 THE WITNESS: May I answer,</p> <p>6 sir?</p> <p>7 THE SPECIAL MASTER: Hold on a</p> <p>8 second. Let me see the entirety of the</p> <p>9 question. Yes, you may. Now you may.</p> <p>10 A. I don't recall any other</p> <p>11 conversations. There may be some</p> <p>12 information reflected in the letters that</p> <p>13 were written and received after that time</p> <p>14 period. They would be in the documents.</p> <p>15 Q. Did you have any conversations</p> <p>16 with Mr. Donziger after your April 2010</p> <p>17 meeting with Mr. Fajardo and Mr. Yanza on</p> <p>18 the topic of Mr. Cabrera and plaintiffs'</p> <p>19 interactions with Mr. Cabrera?</p> <p>20 A. No, I did not.</p> <p>21 Q. When Chevron filed --</p> <p>22 THE SPECIAL MASTER: Excuse me</p> <p>23 one second. Did you say that you had a</p> <p>24 conversation with Mr. Donziger in February</p> <p>25 of 2010 in the presence of Mr. Susman?</p>

40 (Pages 154 to 157)

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<p style="text-align: right;">158</p> <p>1 J. KOHN</p> <p>2 THE WITNESS: I believe it was</p> <p>3 probably March of 2010, but yes, I did</p> <p>4 testify.</p> <p>5 THE SPECIAL MASTER: Where was</p> <p>6 that?</p> <p>7 THE WITNESS: It was at the</p> <p>8 office of Susman Godfrey in New York, the</p> <p>9 office they had at that time, I believe</p> <p>10 they have moved locations since then,</p> <p>11 their midtown office.</p> <p>12 Q. When did Kohn Swift & Graf</p> <p>13 retain Susman Godfrey to represent the</p> <p>14 firm in connection with its representation</p> <p>15 of the plaintiffs in the Ecuador action?</p> <p>16 A. It was at or about the time of</p> <p>17 the letter I sent in November of 2007.</p> <p>18 Q. 2009?</p> <p>19 A. 2009, yes, sorry.</p> <p>20 Q. After your November 2009</p> <p>21 correspondence, on how many occasions did</p> <p>22 you meet with Mr. Donziger?</p> <p>23 A. Once.</p> <p>24 Q. And is that the meeting at the</p> <p>25 Susman Godfrey offices in March of 2010?</p>	<p style="text-align: right;">160</p> <p>1 J. KOHN</p> <p>2 him saying that --</p> <p>3 MR. GOMEZ: Objection. I just</p> <p>4 want to caution the witness not to reveal</p> <p>5 any privileged communications.</p> <p>6 THE SPECIAL MASTER: Huh? What</p> <p>7 privileged communications?</p> <p>8 MR. GOMEZ: We have a</p> <p>9 discussion about to take place between</p> <p>10 counsel at a critical time. I don't know</p> <p>11 what he is --</p> <p>12 THE SPECIAL MASTER: Between</p> <p>13 counsel? He had resigned.</p> <p>14 MR. GOMEZ: Well, they may have</p> <p>15 been talking about the case. That may</p> <p>16 have been the purpose of the hearing.</p> <p>17 THE SPECIAL MASTER: Let's hear</p> <p>18 it.</p> <p>19 A. He began by saying, addressing</p> <p>20 me and saying I don't know, you may be</p> <p>21 wondering how we have been able to</p> <p>22 continue to fund the case since November,</p> <p>23 and I just shook my head or gave an</p> <p>24 expression of I don't care.</p> <p>25 And he said he has been, you</p>
<p style="text-align: right;">159</p> <p>1 J. KOHN</p> <p>2 A. Yes.</p> <p>3 Q. How long was that meeting?</p> <p>4 A. I believe it was less than an</p> <p>5 hour.</p> <p>6 Q. Who participated in the meeting</p> <p>7 other than yourself and Mr. Donziger?</p> <p>8 A. Ms. Garr was there with</p> <p>9 Mr. Donziger, Mr. Susman, Steve Susman was</p> <p>10 there, and there was another lawyer from</p> <p>11 his office, an associate whose name I do</p> <p>12 not recall, it is not Mr. Art, who then</p> <p>13 worked on some of the other matters. It</p> <p>14 was another gentleman.</p> <p>15 Q. And what occurred during this</p> <p>16 one-hour meeting?</p> <p>17 A. I'm pretty clear it was</p> <p>18 probably less than an hour. It was</p> <p>19 certainly no more than an hour.</p> <p>20 Mr. Donziger and Ms. Garr came</p> <p>21 into the meeting room, sat down, whether</p> <p>22 it was Mr. Susman or I who said to</p> <p>23 Mr. Donziger, you requested the meeting,</p> <p>24 what is it that you want to discuss? Then</p> <p>25 Mr. Donziger began to speak, and I recall</p>	<p style="text-align: right;">161</p> <p>1 J. KOHN</p> <p>2 know, talking to a number of law firms and</p> <p>3 contemplating putting a committee of some,</p> <p>4 you know, committee of counsel together</p> <p>5 and would our firm have any interest, you</p> <p>6 know, in having a seat on that committee</p> <p>7 or being part of that committee.</p> <p>8 I said, you know, I responded</p> <p>9 as follows: That the time for any sort of</p> <p>10 good faith, you know, committee that</p> <p>11 really worked together in my view has long</p> <p>12 since past, that before I would ever</p> <p>13 consider anything you need to respond to</p> <p>14 some letters that Mr. Susman had sent to</p> <p>15 Donziger, simply at that point preserving</p> <p>16 our firm's rights under the retainer</p> <p>17 agreements and under an agreement that we</p> <p>18 had with Donziger, just asking for what</p> <p>19 agreements are you entering into, what</p> <p>20 other firms are participating in the case,</p> <p>21 on what basis. You would have to give</p> <p>22 full disclosure on that before anybody</p> <p>23 would consider anything.</p> <p>24 And I said you would have to</p> <p>25 come clean, and I'm 99.9 percent sure I</p>

41 (Pages 158 to 161)

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<p style="text-align: right;">162</p> <p>1 J. KOHN</p> <p>2 used the term "come clean" about whatever</p> <p>3 is going on with Stratus and the Denver</p> <p>4 1782 proceeding.</p> <p>5 And I recall Donziger responded</p> <p>6 that at that point he had some agreement</p> <p>7 with the Emery firm that they would</p> <p>8 receive a fee equal to 2 percent of</p> <p>9 whatever fee he might receive, that it did</p> <p>10 not impinge any interest on whatever share</p> <p>11 our firm might have had under these old</p> <p>12 agreements.</p> <p>13 And, again, whether I had to</p> <p>14 sort of go back and ask a second time</p> <p>15 about Denver, I'm not sure, or he just</p> <p>16 continued a narration. You know, at some</p> <p>17 point I mentioned that the lawyer from the</p> <p>18 Constantine firm had told me that he had</p> <p>19 withdrawn because of information that</p> <p>20 might be developed or come out in the</p> <p>21 Stratus 1782 proceeding.</p> <p>22 So, you know, I raised that.</p> <p>23 Whether I raised that in the first time I</p> <p>24 asked the question or had to sort of</p> <p>25 follow up with that, I can't divide it</p>	<p style="text-align: right;">164</p> <p>1 J. KOHN</p> <p>2 really would not -- I would rather not</p> <p>3 tell you now. I don't want to tell you</p> <p>4 who I'm talking to about bringing in to a</p> <p>5 case that I'm asking you to join with, but</p> <p>6 I'm not going to tell you who the other</p> <p>7 lawyers are.</p> <p>8 I had somehow had some</p> <p>9 indication that he had approached the</p> <p>10 Motley Rice firm. I think I threw out, do</p> <p>11 you honestly think the Motley Rice firm is</p> <p>12 going to get involved in this? And he was</p> <p>13 like well, I would rather not say.</p> <p>14 At that point Mr. Susman and I</p> <p>15 kind of looked at each other. Mr. Susman</p> <p>16 asked some question about look, regardless</p> <p>17 of what you are doing, why can't you</p> <p>18 defend these depositions? He said between</p> <p>19 your firm or Kohn Swift, don't you have</p> <p>20 people who can go to these depositions,</p> <p>21 specifically talking about the Calmbacher</p> <p>22 deposition where no one had appeared for</p> <p>23 the plaintiffs.</p> <p>24 MR. GOMEZ: Excuse me, who said</p> <p>25 that last part?</p>
<p style="text-align: right;">163</p> <p>1 J. KOHN</p> <p>2 that perfectly. And, again it was kind of</p> <p>3 a look at your shoes shuffle, and he said</p> <p>4 someone on the Ecuadorian team may have</p> <p>5 provided some documentation to Cabrera,</p> <p>6 and if it comes out, that will be, you</p> <p>7 know, could be embarrassing, or, again,</p> <p>8 Chevron will try to make a big deal out of</p> <p>9 it.</p> <p>10 And I responded by saying</p> <p>11 Steve, I find that highly unlikely. My</p> <p>12 sense is that they are probably going to</p> <p>13 find a lot of e-mail traffic going back</p> <p>14 and forth and that you orchestrated it.</p> <p>15 And he looked at the shoes and did not</p> <p>16 respond directly to that, continued about</p> <p>17 well, you know, we are trying to put a new</p> <p>18 team together.</p> <p>19 He kept talking about the team</p> <p>20 and the team is working well together, at</p> <p>21 which point Mr. Susman spoke up for the</p> <p>22 first time and said, what team are you</p> <p>23 talking about? I think literally saying</p> <p>24 who is going to get involved in this.</p> <p>25 Mr. Donziger said well, I</p>	<p style="text-align: right;">165</p> <p>1 J. KOHN</p> <p>2 THE WITNESS: Mr. Susman, Steve</p> <p>3 Susman.</p> <p>4 And at that point the meeting</p> <p>5 just ended. I think Mr. Susman had to go</p> <p>6 to some function, my recollection is maybe</p> <p>7 this was around 4 o'clock, so he had to be</p> <p>8 somewhere at 5, and I said good-bye to</p> <p>9 Mr. Susman in the hallway and went out to</p> <p>10 the elevator lobby and rode down in the</p> <p>11 elevator with Donziger and Ms. Garr, and</p> <p>12 none of us spoke to each other, walked</p> <p>13 outside, and Donziger said, you know, he</p> <p>14 was going one way, I went the other way,</p> <p>15 whether it was the way to the train</p> <p>16 station or not, and he said I'll call you</p> <p>17 in a few days, and I never heard from him</p> <p>18 and didn't care to hear from him or expect</p> <p>19 to hear from him.</p> <p>20 I forgot one fairly important</p> <p>21 thing that was stated at the meeting. I</p> <p>22 think I also said at that meeting clearly,</p> <p>23 and this was in the middle, I guess after</p> <p>24 we had some discussion about the Denver</p> <p>25 thing, I said I don't, you know, want to</p>

42 (Pages 162 to 165)

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<p style="text-align: right;">166</p> <p>1 J. KOHN</p> <p>2 be part of any team that you are part of.</p> <p>3 I looked him in the eye and said I do not</p> <p>4 trust you and would not work in any kind</p> <p>5 of committee where you would purport to</p> <p>6 have any authority and that the best thing</p> <p>7 for the case was for you to withdraw from</p> <p>8 the case in a public and definitive manner</p> <p>9 and have a smooth transition to some other</p> <p>10 people who could try to salvage the case.</p> <p>11 He said at that point, well,</p> <p>12 maybe I should. I did not believe that</p> <p>13 because of his commitment and involvement</p> <p>14 with the case for such a long period of</p> <p>15 time that he had any intention of</p> <p>16 withdrawing.</p> <p>17 Q. Other than saying to you during</p> <p>18 this meeting that someone on the local</p> <p>19 Ecuadorian team may have provided</p> <p>20 information to Mr. Cabrera, did</p> <p>21 Mr. Donziger make any other</p> <p>22 representations about interaction between</p> <p>23 the plaintiffs' team and Mr. Cabrera?</p> <p>24 A. No, that was it. Again, with</p> <p>25 the additional phrase that, you know, it</p>	<p style="text-align: right;">168</p> <p>1 J. KOHN</p> <p>2 of the Calmbacher deposition.</p> <p>3 There had been essentially a</p> <p>4 collection lawsuit filed by Mr. Russell</p> <p>5 against our firm and Donziger for some</p> <p>6 unpaid fees for his time, and I recall</p> <p>7 that the Constantine lawyer had some</p> <p>8 specific question, is there anything in</p> <p>9 that file or that lawsuit that might be</p> <p>10 relevant to the deposition, and, you know,</p> <p>11 I answered his question, I said we would</p> <p>12 look and send him whatever we had on it.</p> <p>13 I said I didn't think there was. There</p> <p>14 was nothing confidential. A complaint was</p> <p>15 filed. We negotiated some reduction and</p> <p>16 that was it. And we did subsequently send</p> <p>17 him whatever we had on that matter.</p> <p>18 Then after the Calmbacher</p> <p>19 deposition occurred and we learned about</p> <p>20 it through the media and that no one had</p> <p>21 appeared for the plaintiffs, I called him</p> <p>22 and said, just out of curiosity, what</p> <p>23 happened to you? Why weren't you</p> <p>24 involved?</p> <p>25 Q. And what did Mr. Shinder say in</p>
<p style="text-align: right;">167</p> <p>1 J. KOHN</p> <p>2 may be embarrassing or Chevron will try to</p> <p>3 make a big deal out of it or try to</p> <p>4 embarrass plaintiffs because of it.</p> <p>5 Q. Did Ms. Garr say anything</p> <p>6 during the meeting?</p> <p>7 A. No.</p> <p>8 Q. On the issue of the Constantine</p> <p>9 Cannon firm, you mentioned that you spoke</p> <p>10 to someone from that firm who had</p> <p>11 withdrawn from the matter; is that right?</p> <p>12 A. Either withdrawn or never</p> <p>13 appeared, one or the other.</p> <p>14 Q. Who was that?</p> <p>15 A. I believe it is Mr. Shindler or</p> <p>16 Shinder.</p> <p>17 Q. And how did you come to speak</p> <p>18 to Mr. Shinder?</p> <p>19 A. He originally called me</p> <p>20 sometime, it might have been</p> <p>21 January/February of 2010, saying that his</p> <p>22 firm was getting involved or was involved</p> <p>23 for the plaintiffs and he was calling to</p> <p>24 ask if we had some information or material</p> <p>25 about Mr. Calmbacher. This was in advance</p>	<p style="text-align: right;">169</p> <p>1 J. KOHN</p> <p>2 response to your inquiry?</p> <p>3 A. He said our firm was looking at</p> <p>4 this, and I believe he referenced the</p> <p>5 Denver or the Stratus matter, and he said</p> <p>6 there is a lot of stuff around that and we</p> <p>7 just decided it was better off not getting</p> <p>8 involved in the case.</p> <p>9 Q. Did he provide any more detail?</p> <p>10 A. No, and I didn't, you know,</p> <p>11 really ask him. You know, he was being</p> <p>12 somewhat circumspect, as was I. You know,</p> <p>13 I didn't have any particular interest.</p> <p>14 Q. In the meeting with</p> <p>15 Mr. Donziger and Ms. Garr, you mentioned</p> <p>16 that Constantine Cannon had withdrawn or</p> <p>17 decided not to get engaged?</p> <p>18 A. I believe my recollection of</p> <p>19 the sequence is the Calmbacher deposition</p> <p>20 would have occurred. I had had the</p> <p>21 conversation with Shinder, Shindler,</p> <p>22 whatever his name is, and then the meeting</p> <p>23 occurred in Mr. Susman's office.</p> <p>24 Because I think I made</p> <p>25 reference --</p>

43 (Pages 166 to 169)

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<p style="text-align: right;">170</p> <p>1 J. KOHN</p> <p>2 Q. To the Constantine Cannon</p> <p>3 withdrawal?</p> <p>4 A. To this guy saying he is not</p> <p>5 getting involved because of Stratus and</p> <p>6 Denver, what's going on.</p> <p>7 Q. You said that you told</p> <p>8 Mr. Donziger at this point in time you did</p> <p>9 not trust him. Do you recall that?</p> <p>10 A. Yes.</p> <p>11 Q. Why didn't you trust</p> <p>12 Mr. Donziger at this point in time?</p> <p>13 A. Well, it was a cumulation of</p> <p>14 events. Obviously you've seen some of the</p> <p>15 documents relating in sort of the end of</p> <p>16 '08, '09, throughout '09, culminating in</p> <p>17 my letter of November '09.</p> <p>18 You know, prior to any of the</p> <p>19 1782 actions proceeding, the relationship</p> <p>20 had just completely deteriorated where he</p> <p>21 wouldn't share information. He would, you</p> <p>22 know, sort of deny access to things, make</p> <p>23 decisions and announce them. Obviously</p> <p>24 what had come out at the Calmbacher</p> <p>25 deposition was all, you know, news.</p>	<p style="text-align: right;">172</p> <p>1 J. KOHN</p> <p>2 Chevron about the matter and saying -- and</p> <p>3 Mr. James, you know, was very light about</p> <p>4 it, he says, you know, we are on a</p> <p>5 first-name basis, he said Joe, what is --</p> <p>6 this guy Barnes is talking to, you know,</p> <p>7 my board, and it is a represented party,</p> <p>8 what are you doing? I said well, he is a</p> <p>9 nonlawyer. I always thought a nonlawyer</p> <p>10 wasn't subject to that.</p> <p>11 But we went back and did some</p> <p>12 research, and, you know, it is arguable</p> <p>13 that the lawyer as part of a legal team or</p> <p>14 a legal matter, it doesn't have to be as</p> <p>15 strong as taking direction from the</p> <p>16 lawyers, but just part of that process,</p> <p>17 that it would be subject to the same kind</p> <p>18 of rules or the lawyers could have an</p> <p>19 ethical issue of communicating with a</p> <p>20 represented party.</p> <p>21 Q. Through the lobbyist?</p> <p>22 A. Yeah, to the party, not to the</p> <p>23 parties' lawyers. Mr. Hillwig prepared a</p> <p>24 legal memorandum. We shared it with</p> <p>25 Mr. Donziger, and he kind of, you know,</p>
<p style="text-align: right;">171</p> <p>1 J. KOHN</p> <p>2 I felt, again, at that point</p> <p>3 knowing the full extent of all the things</p> <p>4 that had been developed in the discovery</p> <p>5 in this proceeding and in the 1782 cases,</p> <p>6 which were just sort of getting under way</p> <p>7 at that time, I felt as a business</p> <p>8 relationship that he was not someone that</p> <p>9 I could trust. Certain things had come</p> <p>10 out, you know, after the fact that he had</p> <p>11 been meeting with or communicating with</p> <p>12 other law firms about involvement in the</p> <p>13 case without our knowledge, and I viewed</p> <p>14 us as having a co-counsel relationship, if</p> <p>15 you will, shopping the case unbeknownst to</p> <p>16 us.</p> <p>17 There were some things that</p> <p>18 seemed sort of minor now compared to some</p> <p>19 of the other issues that have developed.</p> <p>20 There was a point in time where Mr. James</p> <p>21 had called me to say -- to complain that</p> <p>22 Mr. Barnes, who is a registered lobbyist</p> <p>23 in Washington, and a formidable,</p> <p>24 experienced individual, was speaking to</p> <p>25 either officers or board members of</p>	<p style="text-align: right;">173</p> <p>1 J. KOHN</p> <p>2 poo-pooed the whole thing, oh, big deal,</p> <p>3 let them complain about that.</p> <p>4 Again, a small thing compared</p> <p>5 to some of these other things, but not the</p> <p>6 kind of, you know, people that I usually</p> <p>7 have as co-counsel.</p> <p>8 This situation, the exact same</p> <p>9 situation arose a month or two later when</p> <p>10 Donziger said something to the effect that</p> <p>11 Willie Brown, the former Mayor and Speaker</p> <p>12 in California who was helping the</p> <p>13 plaintiffs, also was reaching out to</p> <p>14 individuals that he knew at Chevron or</p> <p>15 board members potentially.</p> <p>16 I said Steve, I don't think you</p> <p>17 can do that. In fact, Mr. Brown actually</p> <p>18 is a lawyer, unlike Mr. Barnes. And</p> <p>19 Donziger's response was oh, let them file</p> <p>20 an ethical complaint against Willie Brown,</p> <p>21 and, you know, we will just blow it up</p> <p>22 into a bigger press thing.</p> <p>23 I had seen by 2009, or by --</p> <p>24 had I seen by that time -- I'm not sure --</p> <p>25 well, I had seen at least a portion of the</p>

44 (Pages 170 to 173)

<p style="text-align: right;">174</p> <p>1 J. KOHN</p> <p>2 film Crude, and there were just -- to me</p> <p>3 it was a revelation because the Donziger</p> <p>4 that I saw in Crude was not the person</p> <p>5 that I spent time with. The bombast and</p> <p>6 the, you know, the statements were, you</p> <p>7 know, not the person that I had, you know,</p> <p>8 spent time with. It was a different -- it</p> <p>9 was almost like a Jekyll and a Hyde kind</p> <p>10 of a thing, so in terms of answering your</p> <p>11 question about trust.</p> <p>12 And just little things about</p> <p>13 the way in the film, there is the setup</p> <p>14 for the meeting in our office with</p> <p>15 Mr. Yanza, Mr. Fajardo and others, and I'm</p> <p>16 not sure if the meeting was sort of in the</p> <p>17 end of '06 or '07, but there is sort of</p> <p>18 this clip in the movie of Donziger</p> <p>19 explaining to them why they are going to</p> <p>20 Philadelphia. We are going to meet these</p> <p>21 guys. We are going to get some money. I</p> <p>22 think he was like Joe Kohn is a nice guy</p> <p>23 or he has going to greet Joe and his</p> <p>24 approach and talk to him on that basis.</p> <p>25 The whole premise of that was</p>	<p style="text-align: right;">176</p> <p>1 J. KOHN</p> <p>2 have given something to them, when, you</p> <p>3 know, he had been very much in charge of</p> <p>4 the process, the cumulation of that caused</p> <p>5 me not to trust him.</p> <p>6 MS. NEUMAN: We are out of</p> <p>7 tape. So should we take our lunch break?</p> <p>8 THE SPECIAL MASTER: Why don't</p> <p>9 we do that.</p> <p>10 THE VIDEOGRAPHER: We are going</p> <p>11 off the record. The time is 12:37 p.m.</p> <p>12 (Luncheon recess: 12:37 p.m.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">175</p> <p>1 J. KOHN</p> <p>2 completely false in the sense that I had</p> <p>3 known Mr. Yanza since -- or had met him in</p> <p>4 1993. There was no meeting that was</p> <p>5 occurring for the first time.</p> <p>6 You know, it was a little</p> <p>7 offputting to me to see that this kind of</p> <p>8 reference of, well, we are just going to</p> <p>9 go to these guys like they are an ATM</p> <p>10 machine and get, you know, let's get us</p> <p>11 some money while we are really running the</p> <p>12 case. I was under the impression that we</p> <p>13 were being informed as appropriate on</p> <p>14 matters and on the general trajectory of</p> <p>15 the case and the basic, you know, movement</p> <p>16 of the process through Ecuador. We were</p> <p>17 not, you know, the Ecuadorian lawyers.</p> <p>18 But this kind of notion of I have this</p> <p>19 case over here and we are just coming to</p> <p>20 you for some money, there was just a</p> <p>21 falsity to that presentation.</p> <p>22 So I think, you know, all of</p> <p>23 that by the time -- then the Constantine</p> <p>24 person telling me, then Donziger saying</p> <p>25 oh, it is really somebody in Ecuador might</p>	<p style="text-align: right;">177</p> <p>1 J. KOHN</p> <p>2 A F T E R N O O N S E S S I O N</p> <p>3 1:30 p.m.</p> <p>4 J O S E P H K O H N, resumed.</p> <p>5 THE VIDEOGRAPHER: We are back</p> <p>6 on the record. The time is 1:30 p.m.</p> <p>7 This is the beginning of disk three.</p> <p>8 CONTINUED EXAMINATION</p> <p>9 BY MS. NEUMAN:</p> <p>10 Q. Mr. Kohn, I want to follow up</p> <p>11 on a few things you said right before the</p> <p>12 lunch break. You mentioned Ben Barnes</p> <p>13 working on behalf of the plaintiffs in the</p> <p>14 Ecuador litigation; is that right?</p> <p>15 A. Yes.</p> <p>16 Q. What were Mr. Barnes'</p> <p>17 responsibilities?</p> <p>18 A. They were primarily to deal</p> <p>19 with government relations issues in</p> <p>20 Washington beginning with issues of the</p> <p>21 U.S. trade representative.</p> <p>22 It was my understanding that</p> <p>23 Chevron had made certain appeals to the</p> <p>24 Trade Office concerning the conduct of the</p> <p>25 litigation in Ecuador and requesting</p>

45 (Pages 174 to 177)

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<p style="text-align: right;">178</p> <p>1 J. KOHN</p> <p>2 certain action be taken on its behalf or</p> <p>3 pursuant to certain regulations or</p> <p>4 treaties or obligations that they thought</p> <p>5 could be invoked, Chevron thought could be</p> <p>6 invoked, and Mr. Barnes was brought on</p> <p>7 board by the plaintiffs' legal team to</p> <p>8 address those issues. There was also, we</p> <p>9 understood, lobbying of Congress relative</p> <p>10 to the same issues.</p> <p>11 Again, Mr. Barnes was brought</p> <p>12 in to respond or rebut or address those</p> <p>13 issues. And as I indicated earlier with</p> <p>14 respect to the issue of the direct</p> <p>15 contacts to any Chevron executives or</p> <p>16 board members, he also believed that he</p> <p>17 had certain contacts and relationships</p> <p>18 that could facilitate a line of</p> <p>19 communications that could lead to a</p> <p>20 negotiation and a settlement of the case.</p> <p>21 Q. When did Mr. Barnes start</p> <p>22 working for the plaintiff team?</p> <p>23 A. Sometime in late 2007 or early</p> <p>24 2008. I have a recollection that at the</p> <p>25 time of the mediation with Mr. Marks in</p>	<p style="text-align: right;">180</p> <p>1 J. KOHN</p> <p>2 Ecuadorian legal system was denying due</p> <p>3 process to a U.S. entity, Chevron, in the</p> <p>4 Lago litigation; that there may have been</p> <p>5 other issues as well, but that that was</p> <p>6 one of the arguments or series of</p> <p>7 arguments or points that were being</p> <p>8 offered by Chevron as to why there was</p> <p>9 violation of the treaty and why some</p> <p>10 action could be taken.</p> <p>11 Q. Did Mr. Barnes, while working</p> <p>12 for the plaintiffs, lobby on behalf of the</p> <p>13 Republic of Ecuador that it should be</p> <p>14 allowed to keep its trade preferences?</p> <p>15 A. I was never present at any</p> <p>16 meeting where Mr. Barnes was speaking to</p> <p>17 either a U.S. Congressperson or U.S.</p> <p>18 government official or trade</p> <p>19 representative. I understood his mission</p> <p>20 from our point of view was to not have a</p> <p>21 finding that our case was somehow a</p> <p>22 violation or that due process was being</p> <p>23 violated in Ecuador such that there could</p> <p>24 be some finding that could be used to</p> <p>25 defeat the case.</p>
<p style="text-align: right;">179</p> <p>1 J. KOHN</p> <p>2 November of '07 that we at least had</p> <p>3 spoken with Mr. Barnes, consulted with</p> <p>4 him, that he already had agreed to start</p> <p>5 working on the matter or that he was going</p> <p>6 to shortly.</p> <p>7 Q. Was Mr. Barnes still working on</p> <p>8 the matter when Kohn Swift & Graf withdrew</p> <p>9 in November of '09?</p> <p>10 A. Yes, he was.</p> <p>11 Q. Now, you indicated that he was</p> <p>12 involved in government relations related</p> <p>13 to the U.S. trade representative; is that</p> <p>14 right?</p> <p>15 A. Yes, among other things, yes.</p> <p>16 Q. Was the issue with the U.S.</p> <p>17 trade representative that Ecuador was in</p> <p>18 breach of its contractual obligations and</p> <p>19 thus should not receive beneficial trade</p> <p>20 preferences?</p> <p>21 A. I understood that Chevron was</p> <p>22 contending that the Republic of Ecuador</p> <p>23 should not have trade preferences and I</p> <p>24 thought that some of the reasons or at</p> <p>25 least one of the reasons was that the</p>	<p style="text-align: right;">181</p> <p>1 J. KOHN</p> <p>2 I don't believe -- there are</p> <p>3 some issues about registering as a</p> <p>4 lobbyist which maybe harkens back to my</p> <p>5 answer right before lunch, but I don't</p> <p>6 believe he ever was lobbying on behalf or</p> <p>7 he was ever retained by the Republic of</p> <p>8 Ecuador, but I'm not aware of that.</p> <p>9 Q. Was Mr. Barnes registered as a</p> <p>10 lobbyist for the plaintiffs?</p> <p>11 A. At one point he was registered</p> <p>12 as a lobbyist for our law firm. When that</p> <p>13 came to our attention, we asked that he</p> <p>14 register as a lobbyist for the plaintiffs,</p> <p>15 and that's what my understanding was he</p> <p>16 was in fact doing. I wrote him and he</p> <p>17 eventually changed -- or did change that</p> <p>18 fairly promptly, withdrew or corrected</p> <p>19 whatever filing you would make as to on</p> <p>20 whose behalf you were a lobbyist.</p> <p>21 Q. When Mr. Barnes registered as a</p> <p>22 lobbyist for Kohn Swift & Graf, did he do</p> <p>23 that without your knowledge?</p> <p>24 A. I recall it was discussed -- my</p> <p>25 position always was that you should</p>

46 (Pages 178 to 181)

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<p style="text-align: right;">182</p> <p>1 J. KOHN</p> <p>2 register as a lobbyist for either the</p> <p>3 Frente or the plaintiffs, that that was</p> <p>4 appropriate.</p> <p>5 I recall having discussions,</p> <p>6 there was some prohibition against</p> <p>7 registering as a lobbyist for foreign</p> <p>8 individuals or foreign entities, and</p> <p>9 recall the answer was no. There might be</p> <p>10 certain issues with respect to a foreign</p> <p>11 government, but not with respect to</p> <p>12 foreign individuals. And, you know, I</p> <p>13 assumed or believed I had made myself</p> <p>14 clear. Later at some point in the process</p> <p>15 Mr. Glazer in our office noticed the</p> <p>16 actual registration that one has to file</p> <p>17 as a lobbyist listed our firm. At that</p> <p>18 point I raised it immediately with</p> <p>19 Donziger and with Barnes.</p> <p>20 At the same time we also</p> <p>21 determined that Mr. Downey's firm had also</p> <p>22 registered as a lobbyist for Kohn Swift &</p> <p>23 Graf and I had a specific conversation</p> <p>24 with Mr. Downey in Ms. Hinton's presence</p> <p>25 where I had made the same statement, you</p>	<p style="text-align: right;">184</p> <p>1 J. KOHN</p> <p>2 Q. Other than Mr. Downey and</p> <p>3 Mr. Barnes, were there other lobbyists</p> <p>4 retained by the plaintiffs' team?</p> <p>5 A. Those are the only ones I can</p> <p>6 remember. And I believe those are the</p> <p>7 only ones, at least up until November</p> <p>8 2009. I don't know about since then.</p> <p>9 Q. Was Mr. Donziger supervising</p> <p>10 directly the work of Mr. Barnes and</p> <p>11 Mr. Downey?</p> <p>12 A. Yes, he was. In fact, that was</p> <p>13 part of the conversation I had with him.</p> <p>14 Q. In the conversation you had</p> <p>15 with Mr. Donziger about registering -- the</p> <p>16 lobbyist registering as being lobbyists</p> <p>17 for the plaintiffs, was Mr. Donziger</p> <p>18 objecting to that?</p> <p>19 A. Yes. He said in his view that</p> <p>20 was -- it should be for our firm, that he</p> <p>21 was aware of some other situation where</p> <p>22 lobbyists have registered on behalf of the</p> <p>23 law firm that was pressing a matter or was</p> <p>24 involved in a matter.</p> <p>25 I said for a couple of reasons</p>
<p style="text-align: right;">183</p> <p>1 J. KOHN</p> <p>2 know, that it didn't make sense to</p> <p>3 register as a lobbyist for U.S.-based</p> <p>4 lawyers, that you are really in fact here</p> <p>5 for the plaintiffs. Unless there is some</p> <p>6 prohibition about registering for a</p> <p>7 foreigner, you should register</p> <p>8 accordingly. I thought Mr. Downey</p> <p>9 understood that.</p> <p>10 So I had a conversation with</p> <p>11 Mr. Donziger about that, and we can get</p> <p>12 into it if you want to know about it.</p> <p>13 Otherwise then I wrote to both</p> <p>14 Mr. Downey's office and Mr. Barnes' office</p> <p>15 and I believe at least in the case of</p> <p>16 Mr. Barnes he did re-register as a</p> <p>17 lobbyist for the Frente, but I could be</p> <p>18 wrong about those details.</p> <p>19 Q. Do you know if Mr. Downey</p> <p>20 re-registered?</p> <p>21 A. I know he immediately withdrew</p> <p>22 as any kind of a lobbyist for our firm and</p> <p>23 I believe he did -- or at that point he</p> <p>24 may have not registered for anyone and not</p> <p>25 worked on the matter any further.</p>	<p style="text-align: right;">185</p> <p>1 J. KOHN</p> <p>2 I did not think that was the way to go.</p> <p>3 One was that I don't know what precisely</p> <p>4 they are doing or purporting to do on our</p> <p>5 behalf. I remember specifically saying</p> <p>6 they certainly don't report to me or I do</p> <p>7 not supervise them.</p> <p>8 I said, additionally, it seems</p> <p>9 to just kind of look funny or look bad</p> <p>10 that somebody would be a lobbyist for a</p> <p>11 U.S.-based law firm when the case is about</p> <p>12 the people in Ecuador who are the, you</p> <p>13 know, purported victims of all this. And</p> <p>14 if he thought it was okay for them to</p> <p>15 register on behalf of a law firm then they</p> <p>16 should do so on behalf of his law firm.</p> <p>17 And the next thing we know they registered</p> <p>18 on behalf of the Frente.</p> <p>19 Q. Did Mr. Donziger articulate any</p> <p>20 reason why he didn't want Mr. Barnes or</p> <p>21 Mr. Downey to register on behalf of the</p> <p>22 plaintiffs or the Frente?</p> <p>23 A. Nope, nothing that I can recall</p> <p>24 other than what I had said, that he had</p> <p>25 seen it before, you know, it happens in</p>

47 (Pages 182 to 185)

<p style="text-align: right;">186</p> <p>1 J. KOHN</p> <p>2 Washington, nobody would notice or nobody</p> <p>3 would make a big deal of it, that kind of</p> <p>4 a tone to the discussion.</p> <p>5 Q. Did Mr. Barnes reach out</p> <p>6 directly to Chevron's board members?</p> <p>7 A. I believe he had some direct</p> <p>8 contact with former Senator Sam Nunn who I</p> <p>9 believe at the time was a board member and</p> <p>10 they, you know, were doing some things</p> <p>11 together and working on some other</p> <p>12 projects and sort of in the context of</p> <p>13 being in some other setting or some other</p> <p>14 meeting he had some discussions with him.</p> <p>15 And he also had another friend</p> <p>16 and a contact whose first name is Wayne,</p> <p>17 and I forget the last name, but a, you</p> <p>18 know, senior gentleman, approximately</p> <p>19 Mr. Barnes' age, who had worked for some</p> <p>20 period of time for an organization or a</p> <p>21 lobbying group of the petroleum industry.</p> <p>22 He was no longer at that organization but</p> <p>23 had been for a number of years and he also</p> <p>24 felt he could be helpful in, A, opening</p> <p>25 channels of communication, number one,</p>	<p style="text-align: right;">188</p> <p>1 J. KOHN</p> <p>2 passed it along to Donziger. I probably</p> <p>3 said it also to Mr. Barnes and kind of,</p> <p>4 you know, I'm telling you, you know, this</p> <p>5 is what the rule is and this is what it</p> <p>6 is.</p> <p>7 But it was not the kind of</p> <p>8 relationship where I would order him to do</p> <p>9 something. I was informing him of that</p> <p>10 position and I'm not authorizing it and</p> <p>11 I'm not directing it. But he is a very,</p> <p>12 you know, person of a lot of substance and</p> <p>13 a lot of history and a lot of contacts</p> <p>14 and, you know, not necessarily somebody</p> <p>15 that you would tell what to do in that</p> <p>16 situation.</p> <p>17 Q. But you were -- or your firm,</p> <p>18 rather, was paying Mr. Barnes for what he</p> <p>19 was doing on behalf of the plaintiffs,</p> <p>20 right?</p> <p>21 A. I'm happy to say Mr. Barnes was</p> <p>22 a gentleman and he is one guy I didn't</p> <p>23 have to pay. He was actually working on</p> <p>24 his own dime.</p> <p>25 Q. Did Mr. Barnes have a</p>
<p style="text-align: right;">187</p> <p>1 J. KOHN</p> <p>2 and, secondly, providing some heft to the</p> <p>3 notion that the plaintiff team could draw</p> <p>4 on people who would have the ability to</p> <p>5 implement some kind of a remediation</p> <p>6 program if we ever got that far, that you</p> <p>7 could look to people who could, you know,</p> <p>8 hire the kinds of engineers and</p> <p>9 engineering firms who would be engaged to</p> <p>10 perform such services or who could bring</p> <p>11 kind of proper oversight, who could</p> <p>12 facilitate issues with the Ecuadorian</p> <p>13 government, if we ever got to that point,</p> <p>14 which we did not. We are a long way from</p> <p>15 there.</p> <p>16 Q. Was Mr. Barnes directed as part</p> <p>17 of his engagement to reach out directly to</p> <p>18 Chevron board members?</p> <p>19 A. Well, we had some of that</p> <p>20 discussion earlier. I think it was</p> <p>21 something that he offered to do, wanted to</p> <p>22 do, said he could do. I didn't focus on</p> <p>23 the issue of the ethical relation of</p> <p>24 talking to represented parties until</p> <p>25 Mr. James raised it. At that point I</p>	<p style="text-align: right;">189</p> <p>1 J. KOHN</p> <p>2 contingent interest in the litigation?</p> <p>3 A. Yes and no. There was a</p> <p>4 proposed agreement as to a percentage</p> <p>5 related to -- what would have been a</p> <p>6 percentage of the recovery and a letter</p> <p>7 was prepared and forwarded and never</p> <p>8 signed by Mr. Barnes or other people in</p> <p>9 his office.</p> <p>10 It was something, you know,</p> <p>11 that I raised from time to time and in</p> <p>12 some of my letters in the November '09</p> <p>13 period and thereafter I make some</p> <p>14 reference to the plaintiffs, that going</p> <p>15 forward they need to make sure they have</p> <p>16 appropriate agreements with the various</p> <p>17 professionals that are all understood by</p> <p>18 everyone, that are ethical and legal, and</p> <p>19 I was referring in part to agreements with</p> <p>20 the nonlawyers who were -- or who</p> <p>21 purported to have any kind of contingency</p> <p>22 interest in the thing.</p> <p>23 Q. Did the issue of Mr. Barnes</p> <p>24 having a contingent interest in the</p> <p>25 litigation come up when he was first</p>

48 (Pages 186 to 189)

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<p style="text-align: right;">190</p> <p>1 J. KOHN</p> <p>2 engaged by the plaintiffs?</p> <p>3 A. Yes.</p> <p>4 Q. And was it agreed at that point</p> <p>5 in time that rather than being paid in</p> <p>6 exchange for his lobbying activities he</p> <p>7 would receive a percentage interest in the</p> <p>8 judgment?</p> <p>9 A. Whether it was for the -- it</p> <p>10 was for his overall involvement and yes,</p> <p>11 so it would include the lobbying and his</p> <p>12 other matters, yes.</p> <p>13 Q. And what was that percentage?</p> <p>14 A. My recollection is, and I think</p> <p>15 it would be spelled out in the proposed --</p> <p>16 or the letter agreements that were not</p> <p>17 signed, or that were forwarded, that it</p> <p>18 was partly time-based, if a resolution of</p> <p>19 the case could occur relatively promptly,</p> <p>20 within I think a year or 18 months, that</p> <p>21 he would have a 17 percent of the total --</p> <p>22 of the amount equal to what the total</p> <p>23 amount of the attorneys' fees were, and it</p> <p>24 would go down to 12 percent or 12.5</p> <p>25 percent or some such thing after the first</p>	<p style="text-align: right;">192</p> <p>1 J. KOHN</p> <p>2 after, you know, a year or two, shouldn't</p> <p>3 there be some other step-down or</p> <p>4 phase-down.</p> <p>5 And this was all about the</p> <p>6 point in, you know, mid to late 2009 when,</p> <p>7 you know, when we withdrew. So there was</p> <p>8 never any resolution to those discussions.</p> <p>9 Q. That you know of with</p> <p>10 Mr. Barnes?</p> <p>11 A. Yeah, that I was involved in,</p> <p>12 yes.</p> <p>13 Q. Is it fair to say that the</p> <p>14 entire time Mr. Barnes was lobbying on</p> <p>15 behalf of the plaintiffs, he expected to</p> <p>16 have a percentage interest in the</p> <p>17 judgment?</p> <p>18 MR. GOMEZ: Objection, calls</p> <p>19 for speculation.</p> <p>20 A. Yeah, it gets a little bit into</p> <p>21 what's in his mind. But I would think he</p> <p>22 proposed -- he proposed working under that</p> <p>23 arrangement. We agreed oral to it. He in</p> <p>24 fact undertook activities, never signed</p> <p>25 the letter, so I'm not sure how that plays</p>
<p style="text-align: right;">191</p> <p>1 J. KOHN</p> <p>2 time period expired.</p> <p>3 Q. And that agreement was</p> <p>4 negotiated between Mr. Barnes and whom?</p> <p>5 A. Primarily Mr. Barnes and</p> <p>6 Mr. Donziger. I was brought into it. It</p> <p>7 was sort of presented, I mean, there was</p> <p>8 negotiation, that was -- at least when I</p> <p>9 heard that was kind of the first proposal</p> <p>10 which I said was okay, agreed to, and then</p> <p>11 it was somewhat puzzling to me that then</p> <p>12 we couldn't get a letter signed that</p> <p>13 memorialized that.</p> <p>14 There was some discussions</p> <p>15 later then as things did not get resolved</p> <p>16 as promptly as we optimistically thought</p> <p>17 they might that it should change to, you</p> <p>18 know, forget the reduction, you know,</p> <p>19 after the time period, but, you know,</p> <p>20 which would be the higher number, and then</p> <p>21 we, you know, I started raising issues of</p> <p>22 well, wait a minute, what if -- shouldn't</p> <p>23 there be some sunset provision to this as</p> <p>24 well. What if this goes on for ten years</p> <p>25 and you are not really doing anything</p>	<p style="text-align: right;">193</p> <p>1 J. KOHN</p> <p>2 into his thinking.</p> <p>3 THE SPECIAL MASTER: Excuse me</p> <p>4 one second. Did anybody do any legal</p> <p>5 research whether or not you could, under</p> <p>6 the statutes regulating lobbyists in</p> <p>7 Washington, you could have a contingent</p> <p>8 fee arrangement based on a judgment?</p> <p>9 THE WITNESS: I did not</p> <p>10 personally or our firm did not.</p> <p>11 Mr. Barnes worked with, or as part of his</p> <p>12 group, there was at least one lawyer, and</p> <p>13 I think actually this refreshes me,</p> <p>14 Mr. Gitter, that I think the proposed</p> <p>15 agreements were with a Mr. Sharp in the</p> <p>16 Ben Barnes Group who is an attorney.</p> <p>17 So I did not, but I understood,</p> <p>18 you know, that they were looking at all</p> <p>19 this and they understood what their</p> <p>20 obligations were as lobbyists and they</p> <p>21 were not new to that profession or that</p> <p>22 process, so I assumed they were operating</p> <p>23 within whatever realm that they needed to</p> <p>24 for their firm.</p> <p>25 Q. The percentage interest in the</p>

49 (Pages 190 to 193)

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<p style="text-align: right;">194</p> <p>1 J. KOHN</p> <p>2 judgment that you orally agreed to with</p> <p>3 Mr. Barnes, was that out of the attorney</p> <p>4 fee portion or out of the totality of the</p> <p>5 judgment?</p> <p>6 A. It was calculated out of the</p> <p>7 attorneys' fee, and that's why I made</p> <p>8 reference in there, there is certainly</p> <p>9 some e-mails or some letter about it that</p> <p>10 the agreement would have to be structured</p> <p>11 directly with the plaintiffs because, you</p> <p>12 know, the lawyer can't share fees with a</p> <p>13 nonlawyer. So it couldn't be -- but that</p> <p>14 it wouldn't increase the amount of funds</p> <p>15 that were taken out of any judgment or</p> <p>16 recovery. So the lawyers would reduce</p> <p>17 their fee by that much, some slice of it,</p> <p>18 directly in agreement with the plaintiffs</p> <p>19 would be paid to compensate the Barnes</p> <p>20 Group.</p> <p>21 Q. And were the plaintiffs</p> <p>22 themselves involved in any of the</p> <p>23 negotiations with Mr. Barnes?</p> <p>24 A. Not that I'm aware of, but I</p> <p>25 believe that -- I believe from</p>	<p style="text-align: right;">196</p> <p>1 J. KOHN</p> <p>2 So I assume they had some interaction on</p> <p>3 some of those issues, or at least in terms</p> <p>4 of getting her sort of started on the</p> <p>5 process.</p> <p>6 Q. Any other activities that</p> <p>7 Mr. Barnes handled?</p> <p>8 A. None that I'm aware of.</p> <p>9 Q. You mentioned Mr. Willie Brown.</p> <p>10 What was his role in the plaintiffs' team?</p> <p>11 A. He was -- did not in my view</p> <p>12 have a particularly defined role. He was</p> <p>13 someone who was perceived as from the</p> <p>14 perspective of being well known and</p> <p>15 effective in all issues California where</p> <p>16 Chevron was.</p> <p>17 It was, again, a notion that</p> <p>18 there would be some comfort or some other</p> <p>19 heft that could be brought to a plaintiff</p> <p>20 negotiating team, if we got to serious</p> <p>21 discussions, someone who we believed could</p> <p>22 be trusted by the leadership at Chevron,</p> <p>23 counsel, and, you know, just someone who</p> <p>24 could be sort of another player in support</p> <p>25 of that kind of role of moving towards a</p>
<p style="text-align: right;">195</p> <p>1 J. KOHN</p> <p>2 Mr. Donziger that the plaintiff legal team</p> <p>3 in Ecuador, Mr. Fajardo, Mr. Yanza, were</p> <p>4 intimately aware of these issues and were</p> <p>5 supportive and agreed to the retention and</p> <p>6 the involvement of the Barnes Group.</p> <p>7 Q. And that's based exclusively on</p> <p>8 what Mr. Donziger told you?</p> <p>9 A. Yes. I did not have any direct</p> <p>10 discussion with Mr. Yanza or Mr. Fajardo</p> <p>11 about involving or the retention or</p> <p>12 contracting with Mr. Barnes.</p> <p>13 Q. You said that Mr. Barnes did</p> <p>14 activities other than lobbying. What were</p> <p>15 his other activities on behalf of the</p> <p>16 plaintiffs?</p> <p>17 A. Well, the settlement outreach</p> <p>18 that I talked about.</p> <p>19 Q. To Chevron?</p> <p>20 A. To Chevron. I don't know if he</p> <p>21 had some more minor role in some of the</p> <p>22 other public relations or press</p> <p>23 activities. Karen Hinton was someone that</p> <p>24 he had worked with in the past and he</p> <p>25 recommended her to handle that side of it.</p>	<p style="text-align: right;">197</p> <p>1 J. KOHN</p> <p>2 settlement and then, you know, what would</p> <p>3 have been a major rehabilitation program</p> <p>4 in Ecuador.</p> <p>5 Q. When did Mr. Brown first get</p> <p>6 involved?</p> <p>7 A. My sort of guesstimate would be</p> <p>8 2008 or 2009, and I believe there is a</p> <p>9 letter that was sent by our firm to</p> <p>10 Mr. Brown and he signed it.</p> <p>11 Q. And was Mr. Brown also</p> <p>12 receiving a percentage fee based on the</p> <p>13 recovery?</p> <p>14 A. I believe it is recited in the</p> <p>15 letter. My recollection is something like</p> <p>16 2 percent of the fee or something, in that</p> <p>17 range, and he is an attorney.</p> <p>18 Q. And his portion was to come out</p> <p>19 of the attorney fee portion?</p> <p>20 A. Correct, 2 percent of the</p> <p>21 attorneys' fee and he was retained as an</p> <p>22 attorney. I think the letter was probably</p> <p>23 with him at his law firm or in that</p> <p>24 regard.</p> <p>25 Q. And did Mr. Brown to your</p>

50 (Pages 194 to 197)

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<p style="text-align: right;">198</p> <p>1 J. KOHN</p> <p>2 knowledge reach out to anyone on the</p> <p>3 Chevron board directly?</p> <p>4 A. I don't have any direct</p> <p>5 knowledge of that. I recall a discussion</p> <p>6 with Mr. Donziger as I related before</p> <p>7 lunch sort of raised -- where it was</p> <p>8 raised. I don't know if I ever received</p> <p>9 anything specific.</p> <p>10 I think he also was acquainted</p> <p>11 with Charles James, the general counsel at</p> <p>12 the time, and of course it would have been</p> <p>13 perfectly appropriate to talk to him. And</p> <p>14 I think, again, he may have -- I never</p> <p>15 spoke directly to Mr. Brown.</p> <p>16 Q. At any time?</p> <p>17 A. At any time, I never had the</p> <p>18 pleasure of meeting him.</p> <p>19 Q. Who got Mr. Brown involved in</p> <p>20 representing the plaintiffs?</p> <p>21 A. He was a contact and a friend,</p> <p>22 an acquaintance of Mr. Barnes.</p> <p>23 Q. Did Mr. Donziger enter into any</p> <p>24 unethical fee splitting -- I'm going to</p> <p>25 start over.</p>	<p style="text-align: right;">200</p> <p>1 J. KOHN</p> <p>2 professionals.</p> <p>3 I'm aware there was some</p> <p>4 communication we received from lawyers for</p> <p>5 Ms. Hinton at one point in time where, I</p> <p>6 didn't speak directly to Ms. Hinton about</p> <p>7 it, but her lawyer said that Mr. Donziger</p> <p>8 had assured her or promised her she would</p> <p>9 have some sort of bonus if the case came</p> <p>10 to conclusion, and I had some discussions</p> <p>11 with those lawyers, but there was never</p> <p>12 any resolution during my time period.</p> <p>13 Q. In these conversations that you</p> <p>14 have mentioned that you had with</p> <p>15 Mr. Donziger where you brought up the</p> <p>16 ethical issue associated with Mr. Barnes</p> <p>17 reaching out directly to Chevron board</p> <p>18 members and/or Mr. Brown reaching out</p> <p>19 directly to Chevron board members, did</p> <p>20 Mr. Donziger make it clear to you in these</p> <p>21 conversations that he was unconcerned with</p> <p>22 that ethical rule?</p> <p>23 A. Yes, I think that's a fair</p> <p>24 summary, and I relayed some of that before</p> <p>25 lunch. Certainly more so with respect to</p>
<p style="text-align: right;">199</p> <p>1 J. KOHN</p> <p>2 Did Mr. Donziger enter into any</p> <p>3 unethical fee splitting agreements that</p> <p>4 you are aware of?</p> <p>5 A. I am not aware of any</p> <p>6 agreements beyond what I have described</p> <p>7 with Mr. Barnes, and I certainly discussed</p> <p>8 with Mr. Donziger and with Mr. Barnes that</p> <p>9 the structuring of that needed to be, you</p> <p>10 know, as I said, it had to be a direct</p> <p>11 relationship with the plaintiffs. It</p> <p>12 could be calculated the way we were</p> <p>13 talking about it, you could figure out</p> <p>14 what the amount was by referring to a</p> <p>15 percentage of the lawyer fees, but you had</p> <p>16 to have a direct agreement with the</p> <p>17 clients.</p> <p>18 I certainly asked for any such</p> <p>19 agreements through Mr. Susman and</p> <p>20 mentioned, you know, in my letters to the</p> <p>21 plaintiffs in I think the November '09</p> <p>22 letter as well as some later that they</p> <p>23 needed to sit down and make sure that they</p> <p>24 had proper, enforceable, appropriate</p> <p>25 agreements with any of these other</p>	<p style="text-align: right;">201</p> <p>1 J. KOHN</p> <p>2 the conversation about Mr. Brown, that was</p> <p>3 subsequent, and perhaps less adamant with</p> <p>4 respect to the initial conversation about</p> <p>5 Mr. Barnes, but did not seem concerned and</p> <p>6 almost had kind of a contrarian, you know,</p> <p>7 oh, that will be good, let's have a</p> <p>8 dust-up about that and that will be just</p> <p>9 more fuel for the fire.</p> <p>10 Q. And is it fair to say that</p> <p>11 Mr. Donziger made no commitment to</p> <p>12 instruct both Mr. Barnes and Mr. Brown not</p> <p>13 to have any direct contact with the</p> <p>14 represented Chevron parties?</p> <p>15 A. He certainly made no such</p> <p>16 commitment to me, but I didn't, you know,</p> <p>17 ask him in those words. You know, I</p> <p>18 didn't say will you commit to tell them</p> <p>19 not to do this. We just had the</p> <p>20 conversations that I relayed.</p> <p>21 Q. The agreement that you</p> <p>22 mentioned that related to Ms. Hinton, I</p> <p>23 want to talk about that for a minute.</p> <p>24 A. Okay.</p> <p>25 Q. How did it first come to your</p>

51 (Pages 198 to 201)

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<p style="text-align: right;">202</p> <p>1 J. KOHN</p> <p>2 attention that Karen Hinton was taking the</p> <p>3 position that she had an interest in the</p> <p>4 judgment?</p> <p>5 A. I believe I either heard that</p> <p>6 from Mr. Donziger or I received a direct</p> <p>7 communication from the lawyers</p> <p>8 representing Ms. Hinton, whose names I</p> <p>9 don't remember, but they were lawyers at</p> <p>10 the Steptoe & Johnson firm in Washington</p> <p>11 D.C.</p> <p>12 Q. Why was Ms. Hinton's Steptoe</p> <p>13 lawyers reaching out to you? What was</p> <p>14 their purpose?</p> <p>15 A. Their purpose was to have a</p> <p>16 more formal or a formal written</p> <p>17 understanding about the bonus that</p> <p>18 Mr. Donziger had discussed with her or, in</p> <p>19 their view, promised her.</p> <p>20 Q. And counsel from Steptoe</p> <p>21 represented to you that Mr. Donziger had</p> <p>22 promised Mrs. Hinton a bonus if the</p> <p>23 plaintiffs won the case?</p> <p>24 A. Yes, not only won -- no,</p> <p>25 received any recovery in the case.</p>	<p style="text-align: right;">204</p> <p>1 J. KOHN</p> <p>2 marked for identification.)</p> <p>3 THE SPECIAL MASTER: Counsel, I</p> <p>4 don't know why I have to keep saying this.</p> <p>5 Let's identify the documents by Bates</p> <p>6 number on the record, please, so that we</p> <p>7 all know what we are doing, right?</p> <p>8 MS. NEUMAN: And the Bates</p> <p>9 numbers on the document are KSG00004278</p> <p>10 through 4280.</p> <p>11 (Witness perusing document.)</p> <p>12 Q. Mr. Kohn, have you had a chance</p> <p>13 to review Exhibit 4006?</p> <p>14 A. Yes, I have.</p> <p>15 Q. The second page Bates stamped</p> <p>16 KSG4279, which begins "Dear Joe, Doug and</p> <p>17 I have conferred with Karen and have the</p> <p>18 following proposal on her success bonus</p> <p>19 compensation. For the purposes of</p> <p>20 discussion, the proposal expressed is a</p> <p>21 percentage of the net, that is the funds</p> <p>22 received by all lawyers minus expenses.</p> <p>23 Once the agreement is reached in</p> <p>24 principal, the percentages will be</p> <p>25 converted into actual dollar amounts that</p>
<p style="text-align: right;">203</p> <p>1 J. KOHN</p> <p>2 collected; not only won, but collected.</p> <p>3 Q. Won and collected?</p> <p>4 A. Right.</p> <p>5 Q. Were you present during any</p> <p>6 conversations between Mr. Donziger and</p> <p>7 Ms. Hinton where this promise of a bonus</p> <p>8 was made?</p> <p>9 A. No.</p> <p>10 Q. Did you ever discuss this issue</p> <p>11 with Ms. Hinton directly?</p> <p>12 A. I do not believe I did. I</p> <p>13 certainly had several conversations with</p> <p>14 the Steptoe & Johnson lawyers, but I did</p> <p>15 not discuss it directly with her.</p> <p>16 MS. NEUMAN: I'm going to hand</p> <p>17 the witness a document we have marked as</p> <p>18 Exhibit 4006. It is a three-page document</p> <p>19 which is an e-mail exchange dated June</p> <p>20 25th and June 26th. The first two e-mails</p> <p>21 in the exchange are between Joseph Kohn</p> <p>22 and Grace Fremlin, and the next two</p> <p>23 exchanges are between Joe Kohn and Steven</p> <p>24 Donziger on the next day, June 26th, 2009.</p> <p>25 (Plaintiff's Exhibit 4006</p>	<p style="text-align: right;">205</p> <p>1 J. KOHN</p> <p>2 correspond to a collected settlement or</p> <p>3 damage award."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Was it your understanding at</p> <p>7 this time that Grace Fremlin of Steptoe &</p> <p>8 Johnson represented Ms. Hinton?</p> <p>9 A. Yes.</p> <p>10 Q. And this is the success bonus</p> <p>11 compensation that you were just testifying</p> <p>12 about that Ms. Hinton was requesting?</p> <p>13 A. Yes.</p> <p>14 Q. In 2009?</p> <p>15 A. Yes.</p> <p>16 Q. Above Ms. Fremlin's proposal</p> <p>17 there is an e-mail from Steven Donziger to</p> <p>18 yourself in which Mr. Donziger says "It</p> <p>19 was a mistake to even engage in this</p> <p>20 negotiation. Please don't do anything</p> <p>21 else without contacting me." Then further</p> <p>22 down Mr. Donziger states "I would offer a</p> <p>23 bonus at our exclusive discretion. Be</p> <p>24 prepared to kiss Karen Hinton good-bye."</p> <p>25 Do you see that?</p>

52 (Pages 202 to 205)

<p style="text-align: right;">206</p> <p>1 J. KOHN</p> <p>2 A. Yes, I do.</p> <p>3 Q. Did you ever have any</p> <p>4 conversations with Mr. Donziger on whether</p> <p>5 or not he had made any promises to</p> <p>6 Ms. Hinton?</p> <p>7 A. Yes.</p> <p>8 Q. What did he tell you?</p> <p>9 A. My recollection is that he, A,</p> <p>10 denied having made a specific agreement,</p> <p>11 as to a specific amount or having, quote,</p> <p>12 reached agreement, and that he said he had</p> <p>13 some discussions with her that would have</p> <p>14 been more in the nature of almost as he</p> <p>15 puts it in this e-mail, yes, if things go</p> <p>16 well in the case and we win, we will, you</p> <p>17 know, see if we can do something at that</p> <p>18 point or there would be some, you know,</p> <p>19 discretionary payment, people who worked,</p> <p>20 you know, we are going to appreciate and</p> <p>21 make sure people feel treated fairly; that</p> <p>22 he acknowledged having that kind of a</p> <p>23 discussion, but not to the point of a</p> <p>24 specific yes, I hereby agree to a bonus</p> <p>25 and now let's tell the lawyers to paper</p>	<p style="text-align: right;">208</p> <p>1 J. KOHN</p> <p>2 A. No, when I was talking about</p> <p>3 the Susman lawyers, I was talking about --</p> <p>4 Q. I'm sorry, Steptoe. I meant</p> <p>5 Steptoe.</p> <p>6 A. I did not refer them. They</p> <p>7 certainly were aware of Donziger's</p> <p>8 involvement and that was what they were --</p> <p>9 that was their starting point, that there</p> <p>10 had been conversations between Donziger</p> <p>11 and Karen Hinton. So I don't remember, it</p> <p>12 is possible that I said, you know, for any</p> <p>13 further discussion of this issue refer</p> <p>14 them to Donziger, but I don't remember</p> <p>15 that. It is possible that something like</p> <p>16 that occurred.</p> <p>17 Q. Do you know why the Steptoe</p> <p>18 lawyers reached out to you?</p> <p>19 A. I can surmise, but I don't</p> <p>20 recall them stating why.</p> <p>21 Q. Ms. Hinton and Hinton</p> <p>22 Communications were the main PR</p> <p>23 representatives for the plaintiffs?</p> <p>24 A. From the point that they got</p> <p>25 involved through recently I gather. But</p>
<p style="text-align: right;">207</p> <p>1 J. KOHN</p> <p>2 it.</p> <p>3 Q. Subsequent to the e-mail</p> <p>4 exchanges in Exhibit 4006, did you and</p> <p>5 Mr. Donziger discuss whether any agreement</p> <p>6 was ultimately reached with Ms. Hinton on</p> <p>7 this issue?</p> <p>8 A. Nothing more specifically -- I</p> <p>9 mean, there may have been some other</p> <p>10 follow-up e-mails. I don't think this was</p> <p>11 the end of the contact from the Steptoe</p> <p>12 lawyers, so there might have been some</p> <p>13 other follow-up in the short period of</p> <p>14 time after that.</p> <p>15 I have a recollection at one</p> <p>16 point Steven said, well, I will talk</p> <p>17 directly to Karen Hinton about this, and</p> <p>18 then, again, I had the general questions</p> <p>19 in the letters from the Susman firm,</p> <p>20 meeting in 2010, any other agreements you</p> <p>21 have reached with people about the case</p> <p>22 that we need to know about.</p> <p>23 Q. Did you refer the Susman</p> <p>24 lawyers to Mr. Donziger after this point</p> <p>25 in time?</p>	<p style="text-align: right;">209</p> <p>1 J. KOHN</p> <p>2 they were not involved in the entirety of</p> <p>3 the time period of the case.</p> <p>4 Q. From the point they first got</p> <p>5 involved until you withdrew, they were the</p> <p>6 main PR firm for the plaintiffs?</p> <p>7 A. Yes.</p> <p>8 Q. Did Mr. Donziger supervise</p> <p>9 Ms. Hinton's work?</p> <p>10 A. Yes, and from all indications</p> <p>11 had worked very closely with her.</p> <p>12 Q. He worked very closely with</p> <p>13 her?</p> <p>14 A. Yes. I would say it was a more</p> <p>15 detailed or more involved relationship</p> <p>16 than just a, quote, supervisor.</p> <p>17 Q. In terms of the plaintiffs'</p> <p>18 press releases that Ms. Hinton and Hinton</p> <p>19 Communications would issue, who had to</p> <p>20 review and approve those communications</p> <p>21 before they could be issued by Hinton?</p> <p>22 A. Well, certainly Donziger was</p> <p>23 intimately involved, as I understood, with</p> <p>24 any and all press releases. Whether at</p> <p>25 some point, you know, their working</p>

53 (Pages 206 to 209)

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<p style="text-align: right;">210</p> <p>1 J. KOHN</p> <p>2 relationship reached a point where Karen</p> <p>3 and/or her company could respond to</p> <p>4 situations or issue something without a</p> <p>5 direct, you know, word for word sign-off</p> <p>6 on a particular thing, I don't know. It</p> <p>7 is conceivable that happened.</p> <p>8 But certainly anything that I</p> <p>9 saw or was aware of, Donziger was</p> <p>10 directing. In many cases he was the</p> <p>11 scrivener or the author of the release and</p> <p>12 Ms. Hinton was supplying the supplemental</p> <p>13 material or just doing the mechanics of</p> <p>14 issuing it and making follow-up calls,</p> <p>15 that sort of thing.</p> <p>16 Q. Was anyone at Kohn Swift & Graf</p> <p>17 involved with reviewing and approving</p> <p>18 Hinton-issued press releases before they</p> <p>19 were released?</p> <p>20 A. For most of the time period we</p> <p>21 were not. At some point in 2009, and,</p> <p>22 again, you have seen some of the e-mails</p> <p>23 or the documents when her firm made a</p> <p>24 concerted effort to be more informed of</p> <p>25 and involved with any details of these</p>	<p style="text-align: right;">212</p> <p>1 J. KOHN</p> <p>2 it as a play in three acts. Act one was</p> <p>3 in the United States in the '90s and the</p> <p>4 New York litigation. Act two was in</p> <p>5 Ecuador in the 2003 period to the</p> <p>6 conclusion. And there would be an act</p> <p>7 three that would be at that point I</p> <p>8 thought in the U.S. relative to</p> <p>9 enforcement. Act three had a turn that I</p> <p>10 did not foresee in act two. Yet it is in</p> <p>11 fact a U.S. act three.</p> <p>12 There was more activity now</p> <p>13 with respect to the lobbying, with respect</p> <p>14 to the public relations, the mediation in</p> <p>15 the U.S., so that was sort of part one,</p> <p>16 that we were perfectly prepared to be more</p> <p>17 involved with those kinds of things that</p> <p>18 we could help with, as opposed to</p> <p>19 inspections in the jungles of Ecuador.</p> <p>20 Secondly, I was getting</p> <p>21 concerned and somewhat frustrated with the</p> <p>22 length of time things were taking, that</p> <p>23 they were not being concluded along the</p> <p>24 schedule that I had been informed sort of</p> <p>25 in the 2006-2007 time period. Even at the</p>
<p style="text-align: right;">211</p> <p>1 J. KOHN</p> <p>2 various projects, we expected that we</p> <p>3 would be seeing press releases before they</p> <p>4 were issued that did not in fact pan out</p> <p>5 and did not in fact happen.</p> <p>6 I think there is even some</p> <p>7 e-mails that I reviewed in this history</p> <p>8 that, you know, we were directly</p> <p>9 complaining about how did this release go</p> <p>10 out without us having the chance to look</p> <p>11 at it or sign off on it or what have you.</p> <p>12 Again, that was pretty close to sort of</p> <p>13 the end of the relationship.</p> <p>14 Q. What led, in 2009, to your and</p> <p>15 your firm's requesting the opportunity to</p> <p>16 review press releases and approve them</p> <p>17 before they were issued by the plaintiffs?</p> <p>18 A. I think it was just part of an</p> <p>19 ongoing process that a lot of the activity</p> <p>20 in the case seemed to be migrating from</p> <p>21 Ecuador to the U.S.</p> <p>22 I have sort of used this</p> <p>23 description I think in the discussions</p> <p>24 that I had with Mr. Fajardo in our office</p> <p>25 in April of 2010, that we somehow viewed</p>	<p style="text-align: right;">213</p> <p>1 J. KOHN</p> <p>2 mediation in November of '07, Mr. Donziger</p> <p>3 and Mr. Fajardo were very confident the</p> <p>4 case would be concluded in six months or</p> <p>5 eight months. Here we are, sort of two</p> <p>6 years later, whatever.</p> <p>7 We had a settlement meeting, as</p> <p>8 you may be aware, in February '09 with</p> <p>9 Chevron lawyers. Mr. Donziger was very</p> <p>10 strident in the position that should be</p> <p>11 taken at that meeting. So, you know,</p> <p>12 after all that, you know, it sort of led</p> <p>13 to the discussions we had at the beginning</p> <p>14 or spring of 2009 of we really need to get</p> <p>15 in and see the whole story here. We need</p> <p>16 to see, you know, we need more information</p> <p>17 about what is happening in Ecuador instead</p> <p>18 of this kind of increasingly sketchy well,</p> <p>19 the case is delayed or the case is on</p> <p>20 track or Chevron filed another motion that</p> <p>21 is delaying things. You know, it was just</p> <p>22 kind of that would be the extent of the</p> <p>23 description that we could get.</p> <p>24 So I think this was just, in</p> <p>25 terms of the press release piece of it, it</p>

54 (Pages 210 to 213)

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<p style="text-align: right;">214</p> <p>1 J. KOHN</p> <p>2 was just part of being more on top of and</p> <p>3 involved with those issues.</p> <p>4 Q. When Chevron filed the Stratus</p> <p>5 1782 in December of 2009, did you receive</p> <p>6 a copy of Chevron's 1782 petition?</p> <p>7 A. I don't think I was, you know,</p> <p>8 served or received it anywhere. I think</p> <p>9 either Mr. Hillwig or Mr. Glazer became</p> <p>10 aware of it in some way, shape or form and</p> <p>11 just pulled it up off, you know, the</p> <p>12 docket.</p> <p>13 Q. Did you review it?</p> <p>14 A. Yes.</p> <p>15 Q. The first firm to appear on</p> <p>16 behalf of the Ecuadorian plaintiffs in</p> <p>17 that Stratus 1782 was the Brownstein firm</p> <p>18 in Denver. Did you have any involvement</p> <p>19 in selecting that firm?</p> <p>20 A. I have never heard of them. I</p> <p>21 was not involved. And we had no</p> <p>22 involvement from the date of my November</p> <p>23 '09 letter, no involvement with any of the</p> <p>24 actions that were taken after that point</p> <p>25 in time. The only discussions or meetings</p>	<p style="text-align: right;">216</p> <p>1 J. KOHN</p> <p>2 time and expenses we had put in to the</p> <p>3 case.</p> <p>4 Q. And you don't remember his</p> <p>5 name?</p> <p>6 A. It might have been a name like</p> <p>7 Foreman or something. You know, if there</p> <p>8 were some papers it would refresh me. But</p> <p>9 I recall that he was in the Connecticut</p> <p>10 office of the Motley firm. His background</p> <p>11 was more of a commercial litigator or a</p> <p>12 more defense type background than one</p> <p>13 might think of other lawyers at the Motley</p> <p>14 Rice firm. And then there was one phone</p> <p>15 call where he was on the line and Mr. Rice</p> <p>16 was also on the line very briefly.</p> <p>17 Q. And what occurred during that</p> <p>18 phone call?</p> <p>19 A. One or the other simply said</p> <p>20 they were looking at some kind of a</p> <p>21 restructuring of the plaintiffs' counsel</p> <p>22 in the Ecuador case and they had some</p> <p>23 possible funding source and they wanted to</p> <p>24 treat our firm appropriately and fairly</p> <p>25 and they had some outline of some</p>
<p style="text-align: right;">215</p> <p>1 J. KOHN</p> <p>2 I had are the ones I discussed that</p> <p>3 occurred at our office in April and the</p> <p>4 month or so earlier with Donziger at the</p> <p>5 Susman firm.</p> <p>6 Q. Did you ever have any</p> <p>7 conversations with anyone from the</p> <p>8 Brownstein firm about their representation</p> <p>9 of the plaintiffs?</p> <p>10 A. Nope, never.</p> <p>11 Q. Did you ever have any</p> <p>12 conversations with anyone from a McDermott</p> <p>13 firm about representing the plaintiffs?</p> <p>14 A. Nope.</p> <p>15 Q. You mentioned Motley Rice</p> <p>16 earlier. Has anyone from Motley Rice ever</p> <p>17 contacted you to discuss the Ecuador</p> <p>18 litigation?</p> <p>19 A. I was contacted by a lawyer</p> <p>20 from I believe their Connecticut office,</p> <p>21 and the gentleman's name escapes me, not</p> <p>22 to discuss litigating the case or any</p> <p>23 issues relative to the 1782, but solely to</p> <p>24 discuss any claims we might have or the</p> <p>25 firm might have with respect to the prior</p>	<p style="text-align: right;">217</p> <p>1 J. KOHN</p> <p>2 agreement that would say, you know, our</p> <p>3 sunk costs in the case would be recognized</p> <p>4 in some way.</p> <p>5 I believe they outlined the</p> <p>6 fact that this proposed funder would be</p> <p>7 entitled to or would want in any such</p> <p>8 agreement to have sort of the first funds</p> <p>9 out or have their payments reimbursed</p> <p>10 initially at some multiplier. My</p> <p>11 recollection was three times whatever it</p> <p>12 was that they were investing in the case.</p> <p>13 And then the new lawyers would want, you</p> <p>14 know, their slice.</p> <p>15 So I think we did prepare a</p> <p>16 schedule. It was similar to Exhibit 4003,</p> <p>17 the two pages of 4003 that had a schedule</p> <p>18 of our history of expenditures and I think</p> <p>19 we either updated that or just sent them</p> <p>20 that document and said take a look at it,</p> <p>21 these are just the expense piece and leave</p> <p>22 aside the time and effort piece for now.</p> <p>23 And that was pretty much the last I heard.</p> <p>24 There was no other discussion. It never</p> <p>25 got to the point of any formal negotiation</p>

55 (Pages 214 to 217)

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<p style="text-align: right;">218</p> <p>1 J. KOHN</p> <p>2 or draft agreements or any such thing that</p> <p>3 I saw.</p> <p>4 Q. And you sent that information</p> <p>5 to Motley Rice?</p> <p>6 A. I believe I sent it to the</p> <p>7 Connecticut lawyer whose name I can't</p> <p>8 remember.</p> <p>9 Q. And what was the timing of</p> <p>10 these Motley Rice calls about fee</p> <p>11 arrangements?</p> <p>12 A. My sense is it was not long</p> <p>13 after my letter of November '09. It</p> <p>14 was -- I don't know. I mean, I'm somewhat</p> <p>15 confused as to whether -- I would have</p> <p>16 said it was before the meeting I had with</p> <p>17 Donziger at the Susman firm but I don't</p> <p>18 think that makes sense because he hadn't</p> <p>19 yet I don't think necessarily disclosed</p> <p>20 that Motley Rice was one of the possible</p> <p>21 participants. So it probably was more</p> <p>22 like the spring of 2010.</p> <p>23 Q. In any of your conversations</p> <p>24 with anyone from Motley Rice, was the</p> <p>25 Cabrera fraud discussed?</p>	<p style="text-align: right;">220</p> <p>1 J. KOHN</p> <p>2 (Witness departs the room.)</p> <p>3 MR. GOMEZ: On the face of it,</p> <p>4 the question is extremely broad and vague.</p> <p>5 My concern is that once the cat is out of</p> <p>6 the bag, I can't put the cat back in the</p> <p>7 bag.</p> <p>8 THE SPECIAL MASTER: Well,</p> <p>9 guess what, the cat has been out of the</p> <p>10 bag for about two and a half years because</p> <p>11 I believe his letter of November 2009</p> <p>12 actually says that in haec verba. Am I</p> <p>13 correct, Ms. Neuman? That's my</p> <p>14 recollection of that letter.</p> <p>15 MS. NEUMAN: Yes, the letter is</p> <p>16 very detailed.</p> <p>17 MR. GOMEZ: Then why are we, if</p> <p>18 it is in the letter, why are we</p> <p>19 questioning the witness?</p> <p>20 THE SPECIAL MASTER: The only</p> <p>21 subject that we are going to be talking</p> <p>22 about now outside the witness' presence is</p> <p>23 whether it is privileged. The answer is</p> <p>24 absolutely not. This cat has been out of</p> <p>25 the bag for three years and not just in</p>
<p style="text-align: right;">219</p> <p>1 J. KOHN</p> <p>2 A. No.</p> <p>3 Q. Were you ever contacted by</p> <p>4 anyone from Patton Boggs in connection</p> <p>5 with the Ecuador litigation?</p> <p>6 A. No.</p> <p>7 Q. Never?</p> <p>8 A. Absolutely not.</p> <p>9 Q. Did you ever talk to a Denver</p> <p>10 lawyer by the name of John McDermott</p> <p>11 regarding the Ecuador litigation?</p> <p>12 A. No.</p> <p>13 Q. Was it the experience of your</p> <p>14 firm by late 2009 that Mr. Donziger was</p> <p>15 consistently withholding critical</p> <p>16 information?</p> <p>17 MR. GOMEZ: Objection,</p> <p>18 privileged.</p> <p>19 THE SPECIAL MASTER: On the</p> <p>20 face of it, it sounds like it is going to</p> <p>21 be -- the withholding is in furtherance of</p> <p>22 the fraud. But we will hear the answer.</p> <p>23 MR. GOMEZ: Can we excuse the</p> <p>24 witness, please?</p> <p>25 THE SPECIAL MASTER: Okay.</p>	<p style="text-align: right;">221</p> <p>1 J. KOHN</p> <p>2 the context of litigation.</p> <p>3 But, in any event, why are we</p> <p>4 talking about it? Because they are</p> <p>5 entitled to find out exactly what is</p> <p>6 behind it. Can we get the witness back?</p> <p>7 Now, I could be wrong about the</p> <p>8 in haec verba part but I'm reasonably</p> <p>9 confident the import of that letter of</p> <p>10 November 2009 was just what I said.</p> <p>11 (Witness returns to the room.)</p> <p>12 THE SPECIAL MASTER: Are we</p> <p>13 going to see the letter now, Ms. Neuman?</p> <p>14 MS. NEUMAN: Yes, we are</p> <p>15 pulling the letter.</p> <p>16 Could you reread the question</p> <p>17 to the witness, please.</p> <p>18 (The record was read.)</p> <p>19 A. I believe that phrase may be in</p> <p>20 the letter I sent at the end of '09. It</p> <p>21 is not conversationally the way I would</p> <p>22 phrase it, but I would stand by or agree</p> <p>23 with that statement, yes.</p> <p>24 MS. NEUMAN: I'm going to hand</p> <p>25 to the witness an exhibit that was</p>

56 (Pages 218 to 221)

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<p style="text-align: right;">222</p> <p>1 J. KOHN</p> <p>2 previously marked as Exhibit 1629. For</p> <p>3 the record, this document consists of</p> <p>4 three letters. The first is an August</p> <p>5 9th, 2010 letter to Mr. Fajardo,</p> <p>6 Mr. Yanza, Mr. Piaguaje, Mr. Chavez,</p> <p>7 Mr. Payaguaje and Mr. Criollo from</p> <p>8 Mr. Kohn. That letter bears the Bates</p> <p>9 numbers DONZ00026949 through DONZ26949.</p> <p>10 Attached to that is a November</p> <p>11 10th, 2009 letter to Mr. Yanza and</p> <p>12 Mr. Fajardo from Mr. Kohn which bears the</p> <p>13 Bates numbers DONZ -- oh, Mr. Stavers is</p> <p>14 pointing out to me that the Bates number</p> <p>15 is identical. So the second letter is</p> <p>16 DONZ26949 pages 7 through 13 of 22.</p> <p>17 And the third letter which is a</p> <p>18 November 19, 2009 letter to Mr. Yanza and</p> <p>19 Mr. Fajardo bears the Bates numbers 26949</p> <p>20 pages 15 to 22.</p> <p>21 Q. Mr. Kohn, did you draft and</p> <p>22 send all three letters included in Exhibit</p> <p>23 1629?</p> <p>24 A. Yes, I did.</p> <p>25 Q. And did you send the letters on</p>	<p style="text-align: right;">224</p> <p>1 J. KOHN</p> <p>2 the letter?</p> <p>3 A. I believe so, yeah.</p> <p>4 Q. Or I should say of each of</p> <p>5 these letters?</p> <p>6 A. I'm not 100 percent sure about</p> <p>7 the August 9th, 2010 letter, which was the</p> <p>8 first page of the exhibit. I may not have</p> <p>9 done a Spanish translation at that point.</p> <p>10 My feeling was translate it yourself. But</p> <p>11 as to the first two, I'm pretty sure we</p> <p>12 did forward a Spanish translation at the</p> <p>13 same time.</p> <p>14 Q. In the November -- well, were</p> <p>15 the contents of the November 19th, 2009</p> <p>16 letter accurate at the time you wrote it?</p> <p>17 A. Yes.</p> <p>18 Q. In the November 2009 letter --</p> <p>19 A. There are two November 2009,</p> <p>20 so --</p> <p>21 Q. I'm sorry, November 19th.</p> <p>22 A. Yes.</p> <p>23 Q. You state, on page 2, paragraph</p> <p>24 4, "Our firm's support of the case has</p> <p>25 been extraordinary. In addition to the</p>
<p style="text-align: right;">223</p> <p>1 J. KOHN</p> <p>2 the dates indicated on each letter?</p> <p>3 A. I believe I did, or certainly</p> <p>4 within a day of the dates on the letter.</p> <p>5 Q. I note that the letter -- let</p> <p>6 me withdraw that.</p> <p>7 Can you turn to page 15 of 22,</p> <p>8 the third letter, the one dated November</p> <p>9 19th, 2009.</p> <p>10 A. Yes.</p> <p>11 Q. It is addressed to Mr. Yanza</p> <p>12 and Mr. Fajardo but there is no -- by</p> <p>13 name -- but without an address. Do you</p> <p>14 see that?</p> <p>15 A. Yes, I do.</p> <p>16 Q. How would you send this letter</p> <p>17 to them?</p> <p>18 A. I am pretty sure it was sent by</p> <p>19 e-mail and we may have also sent a hard</p> <p>20 copy follow-up. I also had the</p> <p>21 recollection at the time I sent these, I</p> <p>22 sent our own Spanish translation with</p> <p>23 them, or maybe that followed, but I have a</p> <p>24 recollection that --</p> <p>25 Q. You sent a Spanish version of</p>	<p style="text-align: right;">225</p> <p>1 J. KOHN</p> <p>2 attorney time we have expended, we have</p> <p>3 spent approximately \$7 million, of which</p> <p>4 \$1.1 million has been paid to Doug</p> <p>5 Beltman's company, \$1 million to Steven</p> <p>6 for fees and expenses and \$700,000 on</p> <p>7 public relations firms."</p> <p>8 Is that accurate?</p> <p>9 A. Yes.</p> <p>10 Q. On the next page, page 3 of the</p> <p>11 letter itself, the November 19th, 2009</p> <p>12 letter, you state "Steven" -- that's</p> <p>13 referring to Steven Donziger?</p> <p>14 A. Yes.</p> <p>15 Q. "Steven repeatedly makes</p> <p>16 demands for funds from our firm which are</p> <p>17 undocumented, not preapproved and outside</p> <p>18 any agreed-upon budget."</p> <p>19 Was that accurate?</p> <p>20 A. Yes.</p> <p>21 Q. Did Mr. Donziger represent to</p> <p>22 you why he was making demands for</p> <p>23 undocumented funds?</p> <p>24 A. It would come up in particular</p> <p>25 conversations, I can recall in a few</p>

57 (Pages 222 to 225)

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<p style="text-align: right;">226</p> <p>1 J. KOHN</p> <p>2 instances, I suppose, thinking about it,</p> <p>3 the discussion of the purchase of</p> <p>4 Mr. Yanza's home was one such instance.</p> <p>5 I remember one where, again,</p> <p>6 sort of more summer of 2009 I believe that</p> <p>7 Mr. Donziger telephoned me to request</p> <p>8 payments or funding for some individual</p> <p>9 who was purportedly going to write a</p> <p>10 series of op-ed pieces, I think the number</p> <p>11 was five or six, at a cost of \$5,000 per</p> <p>12 article, or per opinion. I said that</p> <p>13 sounded kind of overpriced and didn't make</p> <p>14 a lot of sense, and we had Ms. Hinton on</p> <p>15 board, isn't that kind of what she should</p> <p>16 be doing, and didn't Mr. Donziger author a</p> <p>17 lot of the letters to the editor and that</p> <p>18 sort of thing, you know, and why do we</p> <p>19 need yet another entity and some other</p> <p>20 funding. So he accepted that.</p> <p>21 Then I think whether it was a</p> <p>22 week later or two days later or two weeks</p> <p>23 later I had another discussion with him</p> <p>24 where he said he had already committed to</p> <p>25 this person and the person had already</p>	<p style="text-align: right;">228</p> <p>1 J. KOHN</p> <p>2 at a time with no receipts or backup of</p> <p>3 any kind being sent to us."</p> <p>4 Was that accurate?</p> <p>5 A. My recollection is it might</p> <p>6 have reached sort of a six or nine-month</p> <p>7 range. I'm somewhat surprised to see here</p> <p>8 the year reference. But it could have</p> <p>9 been six or nine months before we sort of</p> <p>10 started to make inquiry about them and</p> <p>11 then it dragged on another three months</p> <p>12 that it actually reached a year.</p> <p>13 I think if it is in here, it</p> <p>14 probably was correct at the time and</p> <p>15 accurate but it may have overstated that</p> <p>16 by several months. It may have been an</p> <p>17 exaggeration.</p> <p>18 Q. In the first paragraph on the</p> <p>19 same page you state "Your letter frames</p> <p>20 the fundamental problem which has affected</p> <p>21 our firm's relationship with Steven and</p> <p>22 which I have repeatedly raised with him,</p> <p>23 namely the position that the budget</p> <p>24 decisions and all strategy decisions in</p> <p>25 the case will be made by Steven and our</p>
<p style="text-align: right;">227</p> <p>1 J. KOHN</p> <p>2 done one or two, you know, had written</p> <p>3 some things, and he felt obliged to owe</p> <p>4 him. So we had the same discussion we had</p> <p>5 about the home for Luis Yanza, that is</p> <p>6 wonderful, but you can pay him out of</p> <p>7 whatever funds you have.</p> <p>8 You know, at this point it was</p> <p>9 sort of a frustration level. We were also</p> <p>10 requesting the backup materials from Selva</p> <p>11 Viva that had lagged now to a period of</p> <p>12 like four, five, six months, or perhaps</p> <p>13 even longer. I had been saying, I had</p> <p>14 been asking about maybe since July or</p> <p>15 August of '09 and we still haven't even</p> <p>16 gotten these basic, you know, monthly</p> <p>17 books that we had been getting on a</p> <p>18 regular basis for a period of time.</p> <p>19 So that was I think part of</p> <p>20 what we were referencing there. There may</p> <p>21 have been some other instances that I</p> <p>22 don't have fresh in my mind right now.</p> <p>23 Q. In the third full paragraph on</p> <p>24 this page of Exhibit 1629 you say "On the</p> <p>25 contrary, we sent payments for over a year</p>	<p style="text-align: right;">229</p> <p>1 J. KOHN</p> <p>2 firm is obligated to pay any and all</p> <p>3 costs, whatever they might be, and whether</p> <p>4 they are set forth in any budget or not</p> <p>5 and have no other involvement or say in</p> <p>6 the case."</p> <p>7 Had Mr. Donziger been taking</p> <p>8 the position that he was the one to make</p> <p>9 all strategy decisions in the case?</p> <p>10 A. He had, and it was sort of a</p> <p>11 gradual revelation and a process which had</p> <p>12 culminated in the fall of 2009, and it had</p> <p>13 become apparent to our firm that there had</p> <p>14 been a concerted effort on his part to</p> <p>15 downplay certain things, deflect meeting</p> <p>16 dates, change the subject to whatever some</p> <p>17 particular emergency might be that day,</p> <p>18 and I had had probably four or five</p> <p>19 separate sit-down meetings with him in the</p> <p>20 period from sort of the end of '08 through</p> <p>21 the beginning of November of '09 of sort</p> <p>22 of increasing escalation of</p> <p>23 contentiousness in our relationship, an</p> <p>24 increasing level of frustration on my part</p> <p>25 about being -- I think I used the term</p>

58 (Pages 226 to 229)

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<p style="text-align: right;">230</p> <p>1 J. KOHN</p> <p>2 "blocked" in a lot of the discussion, why</p> <p>3 are we being blocked from going here or</p> <p>4 there or participating in a particular</p> <p>5 meeting. The biggest and principal</p> <p>6 example was our inability to get a meeting</p> <p>7 with the Ecuadorian legal team to discuss</p> <p>8 the preparation of the final submission,</p> <p>9 as I understood it would be, and to just</p> <p>10 get a handle on all the pending motions in</p> <p>11 the case so that we could participate and</p> <p>12 help and add our advice.</p> <p>13 Mr. Hillwig and Mr. Glazer and</p> <p>14 Mr. Solomon, Jared Solomon, who was</p> <p>15 another attorney working on the matter,</p> <p>16 were experiencing similar problems or</p> <p>17 perhaps even more aggressive behavior from</p> <p>18 Mr. Donziger in their one-on-one</p> <p>19 relationships with him or in any kind of</p> <p>20 discussions they had with him where I was</p> <p>21 not participating. And through the</p> <p>22 earlier phase of that, Mr. Donziger</p> <p>23 remained, you know, friendly with me,</p> <p>24 cheerful, I hear what you're saying, but,</p> <p>25 as I say, it sort of continued to</p>	<p style="text-align: right;">232</p> <p>1 J. KOHN</p> <p>2 Mr. Donziger and Mr. Woods and Ms. Garr I</p> <p>3 believe, to sort of go over an agenda of</p> <p>4 all, as we saw it, anything and everything</p> <p>5 having to do with the case. Included on</p> <p>6 that I believe was the notion of either,</p> <p>7 you know, our lawyers going to Ecuador or</p> <p>8 the next time, you know, some of the team</p> <p>9 was in the U.S., to really sit down and</p> <p>10 get us into the day to day and the detail</p> <p>11 of what was transpiring in the litigation.</p> <p>12 Initially that was not rejected</p> <p>13 by Mr. Donziger. It was sort of recorded</p> <p>14 as a good idea, "I'll get on it. We'll</p> <p>15 schedule it." And then there is a</p> <p>16 history, you know, months, tentative date</p> <p>17 scheduled, other distractions that would</p> <p>18 occur. Then there was some notion I think</p> <p>19 that Pablo Fajardo was unavailable for a</p> <p>20 large portion of the summer. Then there</p> <p>21 was a lot of talk about scheduling</p> <p>22 something in August or right around Labor</p> <p>23 Day, e-mails, I recall from the other</p> <p>24 attorneys in our office, clearing</p> <p>25 schedules, then sort of more kind of</p>
<p style="text-align: right;">231</p> <p>1 J. KOHN</p> <p>2 escalate. And sort of the last two such</p> <p>3 meetings, you know, it was kind of the</p> <p>4 point where this was a critical point in</p> <p>5 this long relationship and this long</p> <p>6 history of the case but simply we cannot</p> <p>7 function in this manner anymore.</p> <p>8 Q. When you and your firm were</p> <p>9 trying to get a meeting with the local</p> <p>10 Ecuadorian lawyers in this time frame,</p> <p>11 December '08 through November of '09, what</p> <p>12 reasons did Mr. Donziger give for not</p> <p>13 setting up that meeting?</p> <p>14 A. I think in terms of the sort of</p> <p>15 express notion of a kind of all hands on</p> <p>16 deck meeting probably began more in</p> <p>17 March/April '09 and dragged on through,</p> <p>18 you know, October/November '09.</p> <p>19 But initially there was not</p> <p>20 necessarily an objection, I recall, sort</p> <p>21 of as a jumping off point in this</p> <p>22 particular issue, a meeting in our office</p> <p>23 which I think maybe was April -- March or</p> <p>24 April of '09 attended by the four lawyers</p> <p>25 in our firm that I mentioned, attended by</p>	<p style="text-align: right;">233</p> <p>1 J. KOHN</p> <p>2 passive aggressive deflection from</p> <p>3 Mr. Donziger, they are too busy on other</p> <p>4 things right now.</p> <p>5 And finally it reached a point</p> <p>6 where Donziger sent an e-mail saying it is</p> <p>7 not productive, it is not a productive use</p> <p>8 of time for you to meet with the</p> <p>9 Ecuadorian lawyers and it will not occur.</p> <p>10 There were prior e-mails where Mr. Glazer</p> <p>11 was communicating with the gentleman I</p> <p>12 referred to as Juampa, who was probably</p> <p>13 the best English speaker among the day to</p> <p>14 day Ecuadorian legal team, and Donziger</p> <p>15 sent some nasty e-mails, you know, don't</p> <p>16 communicate with him directly. It is</p> <p>17 improper. There is no reason. Every</p> <p>18 communication must go through me.</p> <p>19 That would then follow a</p> <p>20 pattern where I would have an e-mail or</p> <p>21 telephone call with Donziger, you know,</p> <p>22 what's this about? This is crazy.</p> <p>23 Well, you know, I'm busy, I'm</p> <p>24 in Ecuador right now. I'll be back next</p> <p>25 week. We will get together.</p>

59 (Pages 230 to 233)

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<p style="text-align: right;">234</p> <p>1 J. KOHN</p> <p>2 We would get together, we would</p> <p>3 have one of those series of, you know,</p> <p>4 these meetings.</p> <p>5 I used to go back and make</p> <p>6 somewhat light of it with Mr. Hillwig or</p> <p>7 Mr. Glazer and say it is like I'm going</p> <p>8 through a divorce here, we sort of kiss</p> <p>9 and make up and then next week he is</p> <p>10 running around with the milkman again. So</p> <p>11 that was kind of the relationship.</p> <p>12 Q. Did Mr. Donziger ever give you</p> <p>13 an explanation as to why he was</p> <p>14 instructing Kohn Swift & Graf attorneys</p> <p>15 not to interact directly with Juan Pablo</p> <p>16 Saenz or other members of the Ecuadorian</p> <p>17 legal team?</p> <p>18 A. No. Initially it seemed to be</p> <p>19 just sort of a delay tactic. Initially it</p> <p>20 seemed to me to be just kind of an</p> <p>21 egotistical control kind of thing. I even</p> <p>22 put it to him point blank about that. You</p> <p>23 see that. There is lingo in the</p> <p>24 plaintiffs bar where you say a certain</p> <p>25 lawyer or certain law firm is bearhugging</p>	<p style="text-align: right;">236</p> <p>1 J. KOHN</p> <p>2 on the movie It's Complicated. Then</p> <p>3 finally it just reached the point, it was</p> <p>4 just kind of mind boggling, no, I hereby</p> <p>5 forbid you to have those conversations,</p> <p>6 and it was part of a pattern.</p> <p>7 Certainly in hindsight I go</p> <p>8 back to the April '09 meeting or March '09</p> <p>9 meeting in our office. One of the other</p> <p>10 items right at the top of the agenda was</p> <p>11 that Mr. Hillwig and Mr. Glazer would go</p> <p>12 to Mr. Donziger's apartment or his office,</p> <p>13 which I understood was in the apartment,</p> <p>14 and just, you know, get copies of all the</p> <p>15 files, just download everything so we</p> <p>16 could catch up to speed. At the meeting</p> <p>17 in our office he agrees to it. Two,</p> <p>18 three, four days later, a week later, no,</p> <p>19 that's not a good idea.</p> <p>20 Q. And did he explain why?</p> <p>21 A. He did. He said it's too</p> <p>22 complicated. It is too much stuff. Your</p> <p>23 guys, you know, should be focused on</p> <p>24 particular assignments. I'll get them up</p> <p>25 to speed.</p>
<p style="text-align: right;">235</p> <p>1 J. KOHN</p> <p>2 a case. They think a case is going to be</p> <p>3 good so they put all their lawyers on it</p> <p>4 and then you get to some point, well, we</p> <p>5 know about the case, so you guys can't</p> <p>6 participate in other aspects of the case.</p> <p>7 It is usually in a matter where you have,</p> <p>8 you know, plenty of plaintiffs' lawyers</p> <p>9 where it looks like there is going to be</p> <p>10 an almost certain recovery.</p> <p>11 He would sort of laugh about</p> <p>12 that term. And then I had to use that</p> <p>13 three or four times, stop bearhugging it,</p> <p>14 why do you have to do everything.</p> <p>15 He would explain it that he was</p> <p>16 so involved. He used the term repeatedly,</p> <p>17 it's complicated, it's complicated.</p> <p>18 Again, the lawyers in our office used to</p> <p>19 sort of make a joke, it was right around</p> <p>20 the time that that feature movie called</p> <p>21 It's Complicated, which was sort of a</p> <p>22 romance with Meryl Streep, and who is the</p> <p>23 other guy, Baldwin.</p> <p>24 Q. Alec Baldwin.</p> <p>25 A. So we started saying he is back</p>	<p style="text-align: right;">237</p> <p>1 J. KOHN</p> <p>2 You know, in hindsight I see</p> <p>3 that, you know, that should have been the</p> <p>4 absolute break point but obviously looking</p> <p>5 back from sort of April '09 through</p> <p>6 November of '09 we are still trying to</p> <p>7 move ahead with some kind of a</p> <p>8 constructive actual co-counsel</p> <p>9 relationship that could work. I'm trying</p> <p>10 to understand kind of his, A, bearhugging</p> <p>11 or control position, is it solely, you</p> <p>12 know, an egotistical thing, is it solely a</p> <p>13 business thing where he wants to be in a</p> <p>14 position to say he did all the</p> <p>15 decision-making and the work on the case</p> <p>16 and therefore any recovery or any fee</p> <p>17 should be, you know, he should be</p> <p>18 aggrandized in that kind of a discussion</p> <p>19 or negotiation that might occur. That was</p> <p>20 what I thought was going on.</p> <p>21 So there was never any, you</p> <p>22 know, clear answer as to why that</p> <p>23 occurred. And it reached a point where I</p> <p>24 had to send a letter like this in a case</p> <p>25 that our firm had been involved in for 16</p>

60 (Pages 234 to 237)

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<p style="text-align: right;">238</p> <p>1 J. KOHN</p> <p>2 years and significant expenses, we put</p> <p>3 completely at jeopardy because we just</p> <p>4 couldn't function in that relationship</p> <p>5 anymore.</p> <p>6 Q. Now, after Mr. Donziger</p> <p>7 instructed the lawyers at your firm not to</p> <p>8 engage with Mr. Saenz directly, did they</p> <p>9 follow that instruction or did they</p> <p>10 continue to attempt to get information</p> <p>11 from Mr. Saenz?</p> <p>12 A. Well, they certainly continued</p> <p>13 to try to schedule the meeting. So I</p> <p>14 think there was at least some discussion</p> <p>15 along those lines. I don't know if they</p> <p>16 did have other discussions or the sense</p> <p>17 was that Mr. Saenz would be following</p> <p>18 Mr. Donziger's instructions and kind of</p> <p>19 what was the point.</p> <p>20 We were absolutely bewildered</p> <p>21 in this time period. We were scratching</p> <p>22 our heads. Events were not ceasing in the</p> <p>23 case. The whole situation with the Judge</p> <p>24 Nunez thing occurred, as I recall, around</p> <p>25 Labor Day of '09. So there were sort of</p>	<p style="text-align: right;">240</p> <p>1 J. KOHN</p> <p>2 know, to answer your specific question,</p> <p>3 whether he made other attempts other than</p> <p>4 the one or two attempts that show up in</p> <p>5 the e-mail that then say stop, don't do</p> <p>6 that.</p> <p>7 I think Mr. Donziger was</p> <p>8 trying -- or Mr. Glazer was trying to be,</p> <p>9 you know, respectful of his position in</p> <p>10 the firm as a new person on a case that</p> <p>11 had a history. He was very concerned and</p> <p>12 voiced it about Donziger's behavior and,</p> <p>13 as I say, it would result in some series</p> <p>14 of meetings trying to solve that problem</p> <p>15 which, you know, was never solved.</p> <p>16 Q. So on Exhibit -- page 18 of 22</p> <p>17 of Exhibit 1629, you state "At the same</p> <p>18 time as we have spent enormous sums of</p> <p>19 money on the case, Steven has denied us</p> <p>20 access to documents, information and the</p> <p>21 legal team, despite our repeated requests.</p> <p>22 He has made it impossible for us to</p> <p>23 effectively discharge our duty as</p> <p>24 attorneys and has interfered with the</p> <p>25 attorney-client relationship."</p>
<p style="text-align: right;">239</p> <p>1 J. KOHN</p> <p>2 ongoing things that we thought we were at</p> <p>3 least having some participation in but</p> <p>4 this overarching sort of inability to get,</p> <p>5 you know, the relationship on track was</p> <p>6 just, you know, was mind boggling.</p> <p>7 Q. Did anyone at Kohn Swift & Graf</p> <p>8 in this time frame request the case</p> <p>9 documents directly from the lawyers in</p> <p>10 Ecuador as opposed to trying to get them</p> <p>11 through Mr. Donziger?</p> <p>12 A. I don't know if that was in</p> <p>13 some of the communications between</p> <p>14 Mr. Glazer and Mr. Saenz. Mr. Glazer I</p> <p>15 think also made direct outreach to the</p> <p>16 Winston lawyers and I think we got some</p> <p>17 materials from them and I think there was</p> <p>18 a similar, now it is coming back to me,</p> <p>19 there may have been a similar e-mail from</p> <p>20 Donziger, don't talk to the Winston people</p> <p>21 directly, I have to coordinate all that.</p> <p>22 Mr. Glazer had a certain amount</p> <p>23 of material that he was, you know,</p> <p>24 throwing himself into and going through.</p> <p>25 But we didn't have all the -- so I don't</p>	<p style="text-align: right;">241</p> <p>1 J. KOHN</p> <p>2 And that statement was</p> <p>3 accurate?</p> <p>4 A. Yes.</p> <p>5 Q. And that relates to what you</p> <p>6 have just described as Mr. Donziger</p> <p>7 refusing to set up meetings, refusing to</p> <p>8 let Kohn Swift & Graf have a set of the</p> <p>9 documents that he had in his offices,</p> <p>10 instructing Kohn Swift & Graf lawyers not</p> <p>11 to communicate with the Ecuadorian legal</p> <p>12 team, instructing Kohn Swift & Graf</p> <p>13 lawyers not to communicate with Winston &</p> <p>14 Strawn lawyers?</p> <p>15 A. Correct.</p> <p>16 Q. Were there other additional</p> <p>17 aspects to Mr. Donziger denying Kohn Swift</p> <p>18 & Graf access to documents and information</p> <p>19 that you recall?</p> <p>20 A. Yes. I would put several other</p> <p>21 events into that broad summary there.</p> <p>22 After the press releases from</p> <p>23 Chevron surrounding the Judge Nunez</p> <p>24 alleged bribery or bribery scandal, we</p> <p>25 raised with Donziger the notion of having</p>

61 (Pages 238 to 241)

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<p style="text-align: right;">242</p> <p>1 J. KOHN</p> <p>2 a separate U.S. lawyer or lawyers conduct</p> <p>3 an investigation on behalf of our firm and</p> <p>4 his firm and/or even the legal team to try</p> <p>5 to ascertain what the facts were. And we</p> <p>6 had a specific individual in mind who I</p> <p>7 spoke to and I think there is some</p> <p>8 documentation about that individual.</p> <p>9 I recall a conference call,</p> <p>10 whether it was the day or the day after or</p> <p>11 three days after the Nunez issue first</p> <p>12 became public in which Donziger voiced</p> <p>13 that's a good idea, that's great, and I</p> <p>14 think I moved ahead with contacting, it is</p> <p>15 Mr. Trujillo, Kenneth Trujillo, who is an</p> <p>16 attorney in Philadelphia.</p> <p>17 Then, you know, two, three days</p> <p>18 later Mr. Donziger is calling me</p> <p>19 separately saying that's not a good idea.</p> <p>20 He has spoken to some other people he</p> <p>21 knows, other lawyers, and, you know, any</p> <p>22 such, you know, report or analysis could</p> <p>23 be discoverable, etc.</p> <p>24 We had some further</p> <p>25 discussions. We had at least one, if not</p>	<p style="text-align: right;">244</p> <p>1 J. KOHN</p> <p>2 about that as well, whatever charges, you</p> <p>3 know, Chevron had been making.</p> <p>4 Again, same answer, well, this</p> <p>5 is really going to be -- A, it is going to</p> <p>6 take time away from all the important</p> <p>7 things we are doing in the case and, B, it</p> <p>8 is just going to be a political management</p> <p>9 nightmare, diplomatic nightmare. The</p> <p>10 conversation ended.</p> <p>11 I have a very clear</p> <p>12 recollection that I get a phone call back,</p> <p>13 whether it was 15 minutes later or two</p> <p>14 hours later, but one of those, you know,</p> <p>15 follow up, more getting back to you, and I</p> <p>16 have a pretty clear recollection of this.</p> <p>17 He called, he said Joe, I know you guys</p> <p>18 have a firm and you have more people</p> <p>19 involved, I'm just by myself, but I want</p> <p>20 to give you my personal assurance that</p> <p>21 there is nothing that has gone wrong in</p> <p>22 here or nothing that could be embarrassing</p> <p>23 or improper. So I said okay, that sort of</p> <p>24 made me feel better for some short period</p> <p>25 of time, whether a day or two or three,</p>
<p style="text-align: right;">243</p> <p>1 J. KOHN</p> <p>2 two three-way calls between Mr. Trujillo,</p> <p>3 myself and Mr. Donziger. I wanted to go</p> <p>4 ahead with introducing Mr. Trujillo or at</p> <p>5 least hearing his thoughts or his</p> <p>6 background. Then there was a discussion</p> <p>7 or series of discussions, whether it was</p> <p>8 one telephone conversation or two or three</p> <p>9 I had with Donziger where he said it is</p> <p>10 really going to be a major problem with</p> <p>11 the lawyers and the client representatives</p> <p>12 in Ecuador to send some kind of</p> <p>13 investigator like that. They will be</p> <p>14 insulted, put off. It will be a major</p> <p>15 political issue for him to try to manage</p> <p>16 and facilitate.</p> <p>17 You know, I expressed some</p> <p>18 frustration. I said those things can be</p> <p>19 overcome. I said he ought to do</p> <p>20 everything, you know, it may be that -- I</p> <p>21 said you ought to look at the allegations</p> <p>22 that Chevron had been making relative to</p> <p>23 other issues in the case. And he said do</p> <p>24 you mean Cabrera? And I said yeah, why</p> <p>25 not? Why don't we have him ask people</p>	<p style="text-align: right;">245</p> <p>1 J. KOHN</p> <p>2 but, you know, we had that conversation.</p> <p>3 So I would include that in the denying of</p> <p>4 access to the legal team.</p> <p>5 Another instance where we had</p> <p>6 engaged or consulted with a law professor,</p> <p>7 Mr. Gidi, sometime I believe in the summer</p> <p>8 of '09, again, for the same purpose,</p> <p>9 trying to educate us on the Ecuadorian</p> <p>10 law, trying to get the best advice</p> <p>11 possible in terms of putting together</p> <p>12 whatever the final submission would be by</p> <p>13 the plaintiff team, and Donziger just</p> <p>14 resisted any efforts to have this man</p> <p>15 either meet with the lawyers, to even</p> <p>16 participate in any kind of conference</p> <p>17 calls.</p> <p>18 I remember one call we had to</p> <p>19 get everybody's schedules coordinated to</p> <p>20 have a call with Mr. Gidi or Dr. Gidi, I</p> <p>21 think it is a Mr., and Donziger and Andrew</p> <p>22 Woods. A time is set. We get on the</p> <p>23 call. Andrew is on the line. Please hold</p> <p>24 the line for Steven. Just a minute. You</p> <p>25 know, five minutes later, well, Steven is</p>

62 (Pages 242 to 245)

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<p style="text-align: right;">246</p> <p>1 J. KOHN</p> <p>2 doing some other things. You could</p> <p>3 practically hear like dishes clanging in</p> <p>4 the background.</p> <p>5 So then Donziger gets on the</p> <p>6 line, yeah, what? Why do we need this?</p> <p>7 What's this about? Just utter</p> <p>8 unprofessional and inappropriate behavior.</p> <p>9 I would further follow up</p> <p>10 discussions with him in the series of</p> <p>11 meetings I had mentioned, don't we need</p> <p>12 someone like this? Couldn't someone like</p> <p>13 this be helpful to the case? Aren't there</p> <p>14 going to be issues if we get to any</p> <p>15 enforcement proceedings as to whether</p> <p>16 this, you know, this decision is</p> <p>17 appropriate, you know, in the proper legal</p> <p>18 forum and are we citing the right</p> <p>19 statutes, etc., etc., etc.? And it was</p> <p>20 just an utter mind boggling roadblock.</p> <p>21 Q. I'm going to show you a</p> <p>22 document that I'm going to mark as Exhibit</p> <p>23 4007 which bears the Bates numbers</p> <p>24 KSG92076 through 92082.</p> <p>25 (Plaintiff's Exhibit 4007)</p>	<p style="text-align: right;">248</p> <p>1 J. KOHN</p> <p>2 reading from.</p> <p>3 Q. I'm sorry, we are in the first</p> <p>4 paragraph. "More specifically."</p> <p>5 A. Yes, I do see that, yes. Yes,</p> <p>6 I think that is specifically referring to</p> <p>7 the Nunez incident.</p> <p>8 Q. When it says "judge and/or</p> <p>9 government or ruling party officials"?</p> <p>10 A. Correct.</p> <p>11 Q. And it goes on to say "as well</p> <p>12 as with respect to allegations leveled by</p> <p>13 Chevron Corporation, the defendant in that</p> <p>14 litigation, of improper contacts between</p> <p>15 members of the Aguinda legal team and</p> <p>16 various Ecuadorian judges, court-appointed</p> <p>17 experts or government officials."</p> <p>18 A. Yes.</p> <p>19 Q. And those were the two large</p> <p>20 areas that you were proposing an</p> <p>21 independent investigator investigate at</p> <p>22 this time in 2009; is that right?</p> <p>23 A. I wouldn't necessarily limit it</p> <p>24 to two areas. I would think contacts with</p> <p>25 judges maybe is a secondary. Contacts</p>
<p style="text-align: right;">247</p> <p>1 J. KOHN</p> <p>2 marked for identification.)</p> <p>3 Q. Is Exhibit 4007, Mr. Kohn, a</p> <p>4 draft retention agreement that your firm</p> <p>5 prepared for Mr. Trujillo to conduct the</p> <p>6 investigation you were describing a few</p> <p>7 moments ago?</p> <p>8 A. Yes, this appears to be what I</p> <p>9 would call a first draft. I'm not sure if</p> <p>10 it evolved beyond this form or the</p> <p>11 discussions I had referenced earlier had</p> <p>12 took place and it never moved any further</p> <p>13 than that. I don't believe this was ever</p> <p>14 actually forwarded to Mr. Trujillo,</p> <p>15 although the basic concepts may have been</p> <p>16 discussed with him.</p> <p>17 Q. And in this draft that we have</p> <p>18 marked as Exhibit 4007, the proposal is to</p> <p>19 have Mr. Trujillo and his firm investigate</p> <p>20 what knowledge members of the legal team</p> <p>21 prosecuting the Aguinda litigation may</p> <p>22 have of improprieties involving the judge,</p> <p>23 and at the time the judge was Nunez,</p> <p>24 correct?</p> <p>25 A. I'm not sure where you are</p>	<p style="text-align: right;">249</p> <p>1 J. KOHN</p> <p>2 with experts is a third. Government</p> <p>3 officials is a fourth. But it would</p> <p>4 include all of those.</p> <p>5 Q. And what led you to propose</p> <p>6 this investigation was both the</p> <p>7 allegations with regard to Mr. Cabrera</p> <p>8 that Chevron had made as well as the tapes</p> <p>9 on which Judge Nunez appeared discussing</p> <p>10 the case and which payments, if the</p> <p>11 plaintiffs won the case, were also</p> <p>12 discussed?</p> <p>13 A. Yes, and the refusal or the</p> <p>14 inability of our office to get a meeting</p> <p>15 of our own, the cumulation of the meetings</p> <p>16 and discussions that we had since the</p> <p>17 early spring of '09 to this point, which</p> <p>18 was later September. In other words, the</p> <p>19 inability to get information and get facts</p> <p>20 about the case.</p> <p>21 Q. Mr. Donziger, after originally</p> <p>22 stating that it was a good idea to conduct</p> <p>23 an investigation, repeatedly reached out</p> <p>24 to you to discourage going forward with</p> <p>25 this investigation, correct?</p>

63 (Pages 246 to 249)

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<p style="text-align: right;">250</p> <p>1 J. KOHN</p> <p>2 A. Several of the conversations</p> <p>3 where he said it was not a good idea and</p> <p>4 he had, in each of those conversations, he</p> <p>5 had some other reference or some other</p> <p>6 attorney that he had spoken to who he says</p> <p>7 that was not recommending proceeding in</p> <p>8 that manner.</p> <p>9 Q. Did you or Kohn Swift & Graf</p> <p>10 ultimately hire Mr. Trujillo to conduct</p> <p>11 the investigation?</p> <p>12 A. We did not.</p> <p>13 Q. Why not?</p> <p>14 A. Well, A, because within 45 days</p> <p>15 of these discussions we withdrew entirely</p> <p>16 from the case, so I think that, you know,</p> <p>17 this was sort of another straw in the</p> <p>18 camel's back at that point.</p> <p>19 Secondly, I believe without</p> <p>20 Donziger's agreement and cooperation it</p> <p>21 would have been fruitless, that there</p> <p>22 would have been no cooperation with</p> <p>23 Mr. Trujillo, there would have been no</p> <p>24 ability -- he wasn't going to, you know,</p> <p>25 break down the door of their office and</p>	<p style="text-align: right;">252</p> <p>1 J. KOHN</p> <p>2 those firms ever asked to look at your</p> <p>3 files?</p> <p>4 THE WITNESS: No, and neither</p> <p>5 did Burford.</p> <p>6 THE SPECIAL MASTER: And how</p> <p>7 many years have you been in the practice</p> <p>8 of law?</p> <p>9 THE WITNESS: Since 1982.</p> <p>10 THE SPECIAL MASTER: And have</p> <p>11 you ever taken over some case from some</p> <p>12 prior predecessor law firm?</p> <p>13 THE WITNESS: A couple of</p> <p>14 occasions, sure.</p> <p>15 THE SPECIAL MASTER: On those</p> <p>16 occasions did you contact the predecessor</p> <p>17 firm for their files to learn what you</p> <p>18 could about the case?</p> <p>19 THE WITNESS: Sure, before</p> <p>20 taking over as part of the decision</p> <p>21 whether to take it over or not, it is the</p> <p>22 process, yes.</p> <p>23 THE SPECIAL MASTER: Do you</p> <p>24 know, were you ever told by Mr. Donziger</p> <p>25 or anybody else why it was that none of</p>
<p style="text-align: right;">251</p> <p>1 J. KOHN</p> <p>2 put them all in a room and interrogate</p> <p>3 them. It had to be done with a certain</p> <p>4 degree of cooperation.</p> <p>5 THE SPECIAL MASTER: Excuse me,</p> <p>6 Mr. Kohn, I want to harken back to</p> <p>7 something you said before that is on my</p> <p>8 mind and ask you this question:</p> <p>9 Ms. Neuman asked you before</p> <p>10 whether or not, I can't remember which</p> <p>11 firm, had contacted you about your work, a</p> <p>12 successor firm. Patton Boggs never</p> <p>13 contacted you before they became counsel</p> <p>14 to the Lago Agrio plaintiffs?</p> <p>15 THE WITNESS: They never did.</p> <p>16 THE SPECIAL MASTER: Did the</p> <p>17 Smyser firm ever contact you?</p> <p>18 THE WITNESS: Nope.</p> <p>19 THE SPECIAL MASTER: Did</p> <p>20 Mr. Gomez ever contact you?</p> <p>21 THE WITNESS: No.</p> <p>22 THE SPECIAL MASTER: Did any of</p> <p>23 them seek documents from you directly?</p> <p>24 THE WITNESS: Nope.</p> <p>25 THE SPECIAL MASTER: None of</p>	<p style="text-align: right;">253</p> <p>1 J. KOHN</p> <p>2 these firms ever contacted your office?</p> <p>3 THE WITNESS: I was certainly</p> <p>4 never told by Donziger.</p> <p>5 THE SPECIAL MASTER: Were you</p> <p>6 told by anybody? I don't want you to</p> <p>7 speculate.</p> <p>8 THE WITNESS: No, nobody has</p> <p>9 ever said or shared their decision-making</p> <p>10 on that issue.</p> <p>11 THE SPECIAL MASTER: Thank you.</p> <p>12 BY MS. NEUMAN:</p> <p>13 Q. Mr. Kohn, as a practical</p> <p>14 matter, did Mr. Donziger --</p> <p>15 MR. GOMEZ: Excuse me, I want</p> <p>16 to object to that line of questioning as</p> <p>17 irrelevant.</p> <p>18 THE SPECIAL MASTER: I will</p> <p>19 strike it then.</p> <p>20 BY MS. NEUMAN:</p> <p>21 Q. Mr. Kohn, as a practical matter</p> <p>22 did Mr. Donziger prevent Kohn Swift & Graf</p> <p>23 from hiring Mr. Trujillo or any other</p> <p>24 investigator to investigate the</p> <p>25 allegations of fraud as they related to</p>

64 (Pages 250 to 253)

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<p style="text-align: right;">254</p> <p>1 J. KOHN</p> <p>2 Mr. Cabrera and to investigate the Nunez</p> <p>3 bribery scandal?</p> <p>4 A. He didn't prevent us from doing</p> <p>5 so. I think my point of view would be he</p> <p>6 was in a position to prevent it from being</p> <p>7 in any way effective and to make it a</p> <p>8 useless exercise. But no, we could have</p> <p>9 gone forward and had this retention.</p> <p>10 Q. Did Mr. Donziger make it clear</p> <p>11 that if you hired such an investigator, he</p> <p>12 would not cooperate with them?</p> <p>13 A. Yes, he was clear about that,</p> <p>14 yes.</p> <p>15 Q. Mr. Gidi --</p> <p>16 A. I think Gidi is the way it is</p> <p>17 pronounced.</p> <p>18 Q. Gidi.</p> <p>19 MS. HAMILL: G-i-d-i.</p> <p>20 Q. Who was he? Like what was his</p> <p>21 background?</p> <p>22 A. As I recall, he is Brazilian by</p> <p>23 nationality. He is a law professor. He</p> <p>24 was at a U.S. law school for some period</p> <p>25 of time on some sort of exchange program.</p>	<p style="text-align: right;">256</p> <p>1 J. KOHN</p> <p>2 in Spanish?</p> <p>3 A. Yes, he was, as was</p> <p>4 Mr. Trujillo.</p> <p>5 Q. And with regard to Mr. Gidi,</p> <p>6 Mr. Donziger also made it clear that he</p> <p>7 did not want to involve Mr. Gidi in the</p> <p>8 case; is that right?</p> <p>9 A. Yes, he was completely</p> <p>10 uncooperative in any efforts. I think</p> <p>11 there is an e-mail where he complains that</p> <p>12 it is not a good use of funds in the case.</p> <p>13 I think the gentleman wanted a \$3,000</p> <p>14 retainer or \$3,500 retainer. In the</p> <p>15 scheme of things, I think my reply was</p> <p>16 that is about two weeks of Karen Hinton.</p> <p>17 I think it would be money well spent.</p> <p>18 But we did ask, you know,</p> <p>19 Mr. Gidi I think to look at certain of the</p> <p>20 material. We at least tried to educate</p> <p>21 him as best we could, and then, again, the</p> <p>22 relationship terminated fairly soon</p> <p>23 thereafter.</p> <p>24 Q. Now, you mentioned that you did</p> <p>25 have the one or two conversations with</p>
<p style="text-align: right;">255</p> <p>1 J. KOHN</p> <p>2 I'm not sure how we originally</p> <p>3 located his area of expertise, but he had</p> <p>4 written and had been involved in some</p> <p>5 model law drafting in civil code countries</p> <p>6 in South America on certain issues,</p> <p>7 including analogs to class action type</p> <p>8 issues. I think that was something that</p> <p>9 initially we had some interest in.</p> <p>10 And, again, being the eternal</p> <p>11 optimist I was, I thought it was also in</p> <p>12 connection with any possible resolution,</p> <p>13 any kind of settlement issues, and we had</p> <p>14 had a discussion as recently in time to</p> <p>15 these events as February 2009. But the</p> <p>16 issue of how can there ever be any</p> <p>17 finality, how can you ever get a complete</p> <p>18 release of such claims would always come</p> <p>19 up, where you don't have a Rule 23 type</p> <p>20 order or judgment that binds everyone.</p> <p>21 So we were looking at kind of</p> <p>22 that subset of issues but also on the</p> <p>23 broader issues of civil code litigation</p> <p>24 and judgments.</p> <p>25 Q. Mr. Gidi I take it was fluent</p>	<p style="text-align: right;">257</p> <p>1 J. KOHN</p> <p>2 individuals from Motley Rice; do you</p> <p>3 recall that?</p> <p>4 A. Yes.</p> <p>5 Q. Did you raise in the</p> <p>6 conversations with Motley Rice any issues</p> <p>7 about the Cabrera or other fraud in the</p> <p>8 case?</p> <p>9 A. I did not raise -- again, my</p> <p>10 recollection is these conversations were</p> <p>11 probably after the discussions I had had</p> <p>12 in March of 2010. Things were starting to</p> <p>13 come out in the Denver proceeding. The</p> <p>14 Calmbacher deposition had certainly</p> <p>15 already occurred I believe.</p> <p>16 I did raise with the gentleman,</p> <p>17 not with Mr. Rice, but the other lawyer</p> <p>18 from that firm that you may want to sit</p> <p>19 down and think about getting involved with</p> <p>20 Donziger, and the gentleman's response was</p> <p>21 well, I understand it is going to be a</p> <p>22 difficult management problem from my</p> <p>23 perspective, but I've managed some tough</p> <p>24 situations before. I said okay.</p> <p>25 Q. Other than calling you to ask</p>

65 (Pages 254 to 257)

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<p style="text-align: right;">258</p> <p>1 J. KOHN</p> <p>2 you questions about how much money Kohn</p> <p>3 Swift & Graf had invested in the case, did</p> <p>4 Motley Rice seek a copy of your records in</p> <p>5 the case?</p> <p>6 A. No.</p> <p>7 Q. And you testified earlier in</p> <p>8 response to my question that Patton Boggs</p> <p>9 never contacted you. That would include</p> <p>10 not contacting you to get a copy of your</p> <p>11 records, correct?</p> <p>12 A. Correct.</p> <p>13 MS. NEUMAN: I'm getting notes</p> <p>14 on the tape. Can we take a short break</p> <p>15 and change the tape?</p> <p>16 THE SPECIAL MASTER: Sure.</p> <p>17 THE VIDEOGRAPHER: We are going</p> <p>18 off the record. The time is 3:01 p.m.</p> <p>19 (Recess taken.)</p> <p>20 THE VIDEOGRAPHER: We are back</p> <p>21 on the record. The time is 3:23 p.m.</p> <p>22 This is the beginning of disk four.</p> <p>23 MS. NEUMAN: Special Master</p> <p>24 Gitter, on the objection that Mr. Gomez</p> <p>25 lodged to your line of questioning, was it</p>	<p style="text-align: right;">260</p> <p>1 J. KOHN</p> <p>2 him becoming the Ecuadorian court's global</p> <p>3 expert before the court appointed Cabrera.</p> <p>4 Were you aware of any of the meetings that</p> <p>5 Mr. Donziger had with Mr. Cabrera before</p> <p>6 his appointment?</p> <p>7 A. Absolutely not.</p> <p>8 Q. Did Mr. Donziger ever discuss</p> <p>9 with you vetting Fernando Reyes to</p> <p>10 potentially be the Ecuadorian court's</p> <p>11 global expert?</p> <p>12 A. Not that I remember.</p> <p>13 Q. Did Mr. Donziger ever tell you</p> <p>14 that the Ecuadorian legal and technical</p> <p>15 teams were going to meet with Mr. Cabrera</p> <p>16 in March of 2007 in Ecuador?</p> <p>17 A. No. I was unaware of that</p> <p>18 until I saw it in the discovery that you</p> <p>19 had obtained I gather from the filmmaker,</p> <p>20 but I can't recall precisely how that came</p> <p>21 to light.</p> <p>22 Q. The Crude outtakes?</p> <p>23 A. I believe that's when I first</p> <p>24 became aware of that.</p> <p>25 Q. You knew, however, in March of</p>
<p style="text-align: right;">259</p> <p>1 J. KOHN</p> <p>2 your ruling that all of those questions</p> <p>3 and answers were stricken?</p> <p>4 THE SPECIAL MASTER: Yeah.</p> <p>5 Yes, I mean, the answer is yes.</p> <p>6 MS. NEUMAN: Can we object to</p> <p>7 them being stricken?</p> <p>8 THE SPECIAL MASTER: Look, I</p> <p>9 didn't care that much about it, so I</p> <p>10 struck it. But I'm entitled to ask</p> <p>11 whatever I want is the fact, because under</p> <p>12 the order of appointment I have the power</p> <p>13 to question witnesses just like any judge</p> <p>14 has and I have no doubt that Judge Kaplan,</p> <p>15 for example, might have asked those</p> <p>16 questions.</p> <p>17 MS. NEUMAN: Could we have them</p> <p>18 unstricken? We think it is relevant.</p> <p>19 THE SPECIAL MASTER: Look,</p> <p>20 rather than get into an argument with him,</p> <p>21 I would just strike it, so they are</p> <p>22 stricken. He will owe me one for that.</p> <p>23 BY MS. NEUMAN:</p> <p>24 Q. Mr. Kohn, Mr. Donziger</p> <p>25 interviewed Mr. Cabrera and discussed with</p>	<p style="text-align: right;">261</p> <p>1 J. KOHN</p> <p>2 2007 that Mr. Donziger and Ann Maest and</p> <p>3 other environmental consultants for the</p> <p>4 plaintiffs were going to Ecuador, correct?</p> <p>5 A. I knew they were in Ecuador at</p> <p>6 various times in that time frame. Without</p> <p>7 saying something specific as to March '07,</p> <p>8 I couldn't swear that it was March. But</p> <p>9 certainly the inspection process had been</p> <p>10 ongoing for many years. Then it was</p> <p>11 moving into the final damage analysis</p> <p>12 phase and I knew they were all involved</p> <p>13 with that.</p> <p>14 Q. Were you aware of any monies</p> <p>15 being paid to Mr. Cabrera before he was</p> <p>16 appointed as the court's global expert?</p> <p>17 A. No, absolutely not.</p> <p>18 Q. The first thing that</p> <p>19 Mr. Cabrera filed after he was appointed</p> <p>20 the court's global expert was a workplan</p> <p>21 that the plaintiffs' team had drafted.</p> <p>22 Did anyone inform you that the plaintiffs'</p> <p>23 team were drafting Cabrera's work plan?</p> <p>24 A. No one informed me that the</p> <p>25 plaintiffs were drafting Cabrera's work</p>

66 (Pages 258 to 261)

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<p style="text-align: right;">262</p> <p>1 J. KOHN</p> <p>2 plan. I was aware of documents that were</p> <p>3 denominated or referred to as the</p> <p>4 plaintiffs' work plan. So I have seen</p> <p>5 that reference of work plan during those,</p> <p>6 you know, during those years and during</p> <p>7 that process. But no one ever mentioned</p> <p>8 or said or explained that that was</p> <p>9 Cabrera's work plan.</p> <p>10 But I did have an understanding</p> <p>11 that the court-appointed expert, I don't</p> <p>12 know if I even knew the name Cabrera at</p> <p>13 that point, but as matters had been</p> <p>14 explained to me, I understood that that</p> <p>15 individual was to have the right to or the</p> <p>16 ability to review materials that were</p> <p>17 otherwise in the record or that had been</p> <p>18 developed in the evidence of the case.</p> <p>19 Q. Now, Kohn Swift & Graf hired</p> <p>20 Stratus Consulting in August of 2007; does</p> <p>21 that sound right to you?</p> <p>22 A. Yes, uh-huh.</p> <p>23 Q. What was your understanding of</p> <p>24 what you were hiring Stratus to do?</p> <p>25 A. As I understood the Ecuadorian</p>	<p style="text-align: right;">264</p> <p>1 J. KOHN</p> <p>2 remediation as well as putting cost or</p> <p>3 damage figures. I understood, and it says</p> <p>4 it right in their agreement, that they</p> <p>5 were doing that to submit those materials</p> <p>6 to the court on behalf of the plaintiffs</p> <p>7 and I had an understanding that that could</p> <p>8 be material that the court and/or the</p> <p>9 court-appointed expert could review or</p> <p>10 criticize or adopt or accept in part or</p> <p>11 deny in part. And that's what I</p> <p>12 understood them to be doing.</p> <p>13 Q. Did you have any knowledge of</p> <p>14 Stratus, Maest and Beltman, meeting with</p> <p>15 Mr. Cabrera while they were working on</p> <p>16 what became his report?</p> <p>17 A. I have no such knowledge of</p> <p>18 that.</p> <p>19 Q. Did you have any knowledge that</p> <p>20 Stratus was writing the report that</p> <p>21 Mr. Cabrera would file, sign and file?</p> <p>22 A. No, that was contrary to what I</p> <p>23 understood was the case. It was contrary</p> <p>24 to what I understood the agreement was.</p> <p>25 I did understand that Cabrera</p>
<p style="text-align: right;">263</p> <p>1 J. KOHN</p> <p>2 trial court system, it had been explained</p> <p>3 to me originally by Alberto Wray, with</p> <p>4 subsequent conversations with Mr. Bonifaz</p> <p>5 as well, that it had three phases.</p> <p>6 There was the first phase of</p> <p>7 the trial where people submit materials</p> <p>8 and the court reads into the record, etc.</p> <p>9 Then there was the judicial inspection</p> <p>10 phase. Then there was the third and final</p> <p>11 phase which included the court expert as</p> <p>12 well as the parties gathering, reviewing</p> <p>13 all the records from the inspection phase</p> <p>14 and the first phase as well, and putting</p> <p>15 together what we would call the final</p> <p>16 submission or the final arguments which</p> <p>17 would include the claims for the damages</p> <p>18 or the remediation, kind of the damage,</p> <p>19 the notion of the damage phase of a</p> <p>20 litigation.</p> <p>21 So it was my understanding that</p> <p>22 Stratus was being retained to direct and</p> <p>23 participate in that third phase for the</p> <p>24 plaintiffs, pulling together all of the</p> <p>25 evidence that had been developed in the</p>	<p style="text-align: right;">265</p> <p>1 J. KOHN</p> <p>2 could have the right or the court expert</p> <p>3 could have the right to review materials</p> <p>4 that were otherwise properly filed and</p> <p>5 submitted as part of the court proceeding</p> <p>6 and as part of the record, that it wasn't</p> <p>7 that the court expert, you know, could</p> <p>8 only look at the raw data or the raw</p> <p>9 evidence, you know, in isolation by his</p> <p>10 lonesome. He had the ability to draw on</p> <p>11 other materials that were otherwise in the</p> <p>12 record is what I understood.</p> <p>13 But I certainly did not</p> <p>14 understand that anyone was, as to what has</p> <p>15 developed in the facts or what has come</p> <p>16 out now with these declarations from</p> <p>17 Stratus, that they were writing in the</p> <p>18 first person the, you know, conclusions of</p> <p>19 Cabrera as well as the annexes which</p> <p>20 either purport to be his work or purport</p> <p>21 to be him adopting someone else's work.</p> <p>22 Q. Did you understand that the</p> <p>23 report that Stratus -- that you knew</p> <p>24 Stratus was writing got filed with the</p> <p>25 Ecuadorian court at some point in time?</p>

67 (Pages 262 to 265)

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<p style="text-align: right;">266</p> <p>1 J. KOHN</p> <p>2 A. I understood that Stratus'</p> <p>3 work, and I didn't have a clear</p> <p>4 understanding that it was necessarily</p> <p>5 going to be in one single filing or in one</p> <p>6 single document, as far as I knew, work</p> <p>7 that they might have done on pit cleanup</p> <p>8 was a discrete piece of work that would be</p> <p>9 filed, work that was done on other issues,</p> <p>10 you know, reforestation, what have you,</p> <p>11 might have taken the form of a separate</p> <p>12 report, freestanding, that was filed or</p> <p>13 submitted at a different time.</p> <p>14 I didn't understand -- have</p> <p>15 that understanding that it all was being</p> <p>16 done at one time in one fell swoop. I</p> <p>17 understand it was all part of this</p> <p>18 process, it was all part of the phase</p> <p>19 three process.</p> <p>20 Q. Were you reviewing any of the</p> <p>21 drafts of Stratus' work while they were</p> <p>22 working on the global damage assessment?</p> <p>23 A. I received some materials from</p> <p>24 Stratus during that time frame, but I did</p> <p>25 not understand those to be that piece of</p>	<p style="text-align: right;">268</p> <p>1 J. KOHN</p> <p>2 Q. Were you aware that</p> <p>3 Mr. Donziger had instructed Stratus that</p> <p>4 the work they were doing on the Cabrera</p> <p>5 report had to be kept secret and</p> <p>6 confidential?</p> <p>7 A. I was not aware of that.</p> <p>8 Q. Did Mr. Donziger ever discuss</p> <p>9 with you keeping Stratus' work secret or</p> <p>10 confidential?</p> <p>11 A. No.</p> <p>12 Q. Did anyone at Stratus ever</p> <p>13 discuss with you keeping Stratus' work</p> <p>14 secret or confidential?</p> <p>15 A. No. I mean, in terms of the --</p> <p>16 you know, the mediation session which was</p> <p>17 one of the things I spent some time on in</p> <p>18 that time frame, Mr. Beltman and Ms. Maest</p> <p>19 were there. We had a separate day with</p> <p>20 Jonathan Marks where they made a</p> <p>21 PowerPoint presentation and other</p> <p>22 presentation. They were present with the</p> <p>23 Jones Day lawyers. They participated in</p> <p>24 some follow-up discussions I think with</p> <p>25 either outside or in-house Chevron experts</p>
<p style="text-align: right;">267</p> <p>1 J. KOHN</p> <p>2 their work. For example, they did a</p> <p>3 decent size report in connection with the</p> <p>4 November '07 mediation with Jonathan Marks</p> <p>5 and we attached some of those I think to</p> <p>6 our mediation statement.</p> <p>7 I didn't have an understanding</p> <p>8 necessarily as to whether some of those</p> <p>9 reports were also part of what would be</p> <p>10 submitted as part of their other work or</p> <p>11 whether it was specifically for the</p> <p>12 mediation or whether it was a recap of</p> <p>13 work they had done or that some members of</p> <p>14 their team may have done during the</p> <p>15 inspection phase. But they were doing</p> <p>16 that kind of work.</p> <p>17 But I did not see drafts of</p> <p>18 what ultimately -- what was -- what</p> <p>19 ultimately I guess became the Cabrera</p> <p>20 report but what I understood was being</p> <p>21 part of this other process.</p> <p>22 Q. So you didn't see a draft</p> <p>23 document written by Doug Beltman that</p> <p>24 started with "I, Richard Cabrera"?</p> <p>25 A. No, absolutely not.</p>	<p style="text-align: right;">269</p> <p>1 J. KOHN</p> <p>2 under the auspices of the mediation.</p> <p>3 So as far as I knew they were</p> <p>4 kind of there. They could be questioned.</p> <p>5 It wasn't a deposition, but they, you</p> <p>6 know, there was back and forth and, you</p> <p>7 know, again, I was not aware of this whole</p> <p>8 notion of them writing some kind of, you</p> <p>9 know, this ghostwriting and this</p> <p>10 first-person document is absolutely news</p> <p>11 to me and found out about it in the</p> <p>12 discovery you folks developed and in the</p> <p>13 declarations that were just filed</p> <p>14 recently.</p> <p>15 Q. Were you aware on April 1st,</p> <p>16 2008 when Mr. Cabrera filed what purported</p> <p>17 to be his report assessing damages of \$16</p> <p>18 billion?</p> <p>19 A. Was I aware of what?</p> <p>20 Q. Aware that he had filed a</p> <p>21 report assessing damages of \$16 billion?</p> <p>22 MS. HAMILL: Objection to the</p> <p>23 form.</p> <p>24 A. Yeah, I was generally aware. I</p> <p>25 thought the first iteration was less than</p>

68 (Pages 266 to 269)

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<p style="text-align: right;">270</p> <p>1 J. KOHN</p> <p>2 that but I could be mistaken. I was aware</p> <p>3 when the report was issued or filed and it</p> <p>4 became a public event.</p> <p>5 Q. Did you read an English version</p> <p>6 of that report, the body of the report,</p> <p>7 not all the annexes?</p> <p>8 A. Not at that time. We began a</p> <p>9 process of obtaining translations, which</p> <p>10 is interesting that Stratus was also then</p> <p>11 charging us for the translations of these</p> <p>12 documents into English and that took some</p> <p>13 period of time.</p> <p>14 I certainly was aware of the</p> <p>15 bottom line and I think aware of the kind</p> <p>16 of component parts in the big picture.</p> <p>17 And I can't pinpoint when we got an</p> <p>18 English translation of the executive</p> <p>19 summary piece of it, but it was some --</p> <p>20 there was some lag time, but I had at</p> <p>21 least some knowledge or awareness of what</p> <p>22 the conclusions were.</p> <p>23 Q. When you got -- you did</p> <p>24 eventually get an English translation of</p> <p>25 the executive summary?</p>	<p style="text-align: right;">272</p> <p>1 J. KOHN</p> <p>2 those records.</p> <p>3 THE SPECIAL MASTER: Your</p> <p>4 testimony as I understand it is you</p> <p>5 learned in the course of discovery in this</p> <p>6 matter that Stratus wrote the original</p> <p>7 English that got translated into Spanish</p> <p>8 for Cabrera; is that correct?</p> <p>9 THE WITNESS: That's exactly</p> <p>10 the point.</p> <p>11 THE SPECIAL MASTER: And did</p> <p>12 you get charged for that as well?</p> <p>13 THE WITNESS: Probably. I</p> <p>14 don't see it being broken out as a</p> <p>15 translation the way this was broken out as</p> <p>16 sort of a subcontractor or a vendor on the</p> <p>17 translation piece of it.</p> <p>18 THE SPECIAL MASTER: Okay.</p> <p>19 BY MS. NEUMAN:</p> <p>20 Q. At any time after Cabrera had</p> <p>21 filed what was purported to be his report,</p> <p>22 did you have any discussions with</p> <p>23 Mr. Donziger as to how much or to what</p> <p>24 extent the submissions that the plaintiffs</p> <p>25 had made that you thought had been made on</p>
<p style="text-align: right;">271</p> <p>1 J. KOHN</p> <p>2 A. Yes.</p> <p>3 Q. And did you read it?</p> <p>4 A. I did.</p> <p>5 Q. And did you have an</p> <p>6 understanding when you read it that it</p> <p>7 included material drafted by Stratus?</p> <p>8 THE SPECIAL MASTER: Excuse me</p> <p>9 a second, do I understand correctly what</p> <p>10 you just said, namely that you were</p> <p>11 charged by Stratus for the translation</p> <p>12 back from Spanish to English?</p> <p>13 THE WITNESS: That is correct.</p> <p>14 And of all the annexes, there were a</p> <p>15 period of time when the annexes were sort</p> <p>16 of trickling in over --</p> <p>17 THE SPECIAL MASTER: You mean</p> <p>18 your firm, you are talking about your firm</p> <p>19 was charged by Stratus for the translation</p> <p>20 back from Spanish to English?</p> <p>21 THE WITNESS: Yes, and there is</p> <p>22 some -- I think there are some of the</p> <p>23 e-mails that refer to where we are saying</p> <p>24 here's the translation we just translated,</p> <p>25 annex A, B, C, and obviously counsel has</p>	<p style="text-align: right;">273</p> <p>1 J. KOHN</p> <p>2 the record appeared in Cabrera's report?</p> <p>3 MR. GOMEZ: Objection, form.</p> <p>4 THE SPECIAL MASTER: I sustain</p> <p>5 that objection. I don't understand that</p> <p>6 question either.</p> <p>7 Q. Was it your understanding,</p> <p>8 Mr. Kohn, that Stratus was drafting</p> <p>9 materials, writing reports, and that they</p> <p>10 were then being filed with the Ecuadorian</p> <p>11 court on the issue of the global damage</p> <p>12 assessment?</p> <p>13 A. Either filed with the court or</p> <p>14 submitted under some process with the</p> <p>15 court.</p> <p>16 Again, as we talked about</p> <p>17 earlier, whether that could have included,</p> <p>18 you know, just trying to get to</p> <p>19 Mr. Cabrera with a copy to Chevron's</p> <p>20 counsel or filing it with the clerk and</p> <p>21 then it being transmitted, but I</p> <p>22 understood it was being available in</p> <p>23 accordance with appropriate and lawful</p> <p>24 court procedures there.</p> <p>25 Q. Which in your mind would have</p>

69 (Pages 270 to 273)

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<p style="text-align: right;">274</p> <p>1 J. KOHN</p> <p>2 included the fact that Stratus was</p> <p>3 submitting materials to Cabrera being</p> <p>4 public or transparent?</p> <p>5 A. Yeah, absolutely. And I think</p> <p>6 probably in my mind I did visualize an</p> <p>7 actual office in the courthouse where</p> <p>8 these things were housed.</p> <p>9 Q. If you had known at the time</p> <p>10 that Stratus was secretly drafting</p> <p>11 Cabrera's report for him to sign, what</p> <p>12 would you have done?</p> <p>13 THE SPECIAL MASTER: Calls for</p> <p>14 speculation.</p> <p>15 Q. Did you ever have a</p> <p>16 conversation with Mr. Donziger to ask him</p> <p>17 to what extent or how much the work that</p> <p>18 had been done by Stratus and filed was</p> <p>19 adopted or relied on by Cabrera, sort of</p> <p>20 how do we do with the stuff that Stratus</p> <p>21 did versus what Chevron was arguing for?</p> <p>22 A. Not in that -- precisely as you</p> <p>23 ask it. I certainly understood that he</p> <p>24 had accepted most or all or in some cases</p> <p>25 even gone beyond that which the plaintiffs</p>	<p style="text-align: right;">276</p> <p>1 J. KOHN</p> <p>2 that the Cabrera report was issued that</p> <p>3 you now know to be false with regard to</p> <p>4 that report?</p> <p>5 A. Well, any of the statements</p> <p>6 that we talked about earlier where -- I</p> <p>7 think whether it was Mr. Cullen or the one</p> <p>8 situation with Mr. Cullen and Mr. James</p> <p>9 who said we think the plaintiffs have</p> <p>10 influenced Cabrera, and I relayed those to</p> <p>11 Mr. Donziger, and the response was, as I</p> <p>12 said earlier this morning, what are they</p> <p>13 talking about? It is silly.</p> <p>14 Certainly the statement the</p> <p>15 following year after the Kenneth Trujillo</p> <p>16 discussions that I want to assure you</p> <p>17 personally that nothing has gone on here</p> <p>18 that is a problem was false.</p> <p>19 The statements in Mr. Susman's</p> <p>20 office that, you know, some of the people</p> <p>21 on the Ecuadorian team may have handed</p> <p>22 some materials to him or provided some</p> <p>23 materials was false.</p> <p>24 I mean, that was the</p> <p>25 opportunity at that point, I'm asking him</p>
<p style="text-align: right;">275</p> <p>1 J. KOHN</p> <p>2 were proposing or seeking in the case.</p> <p>3 You know, Chevron and the</p> <p>4 plaintiffs had been bandying about that \$5</p> <p>5 billion or \$6 billion number since early</p> <p>6 in the process as a potential total damage</p> <p>7 or remediation cost. You know, this was</p> <p>8 in excess of that. So it was my</p> <p>9 understanding that, you know, yes, he had</p> <p>10 gone, you know, he had accepted the</p> <p>11 plaintiffs' version of damages.</p> <p>12 And I think, again, I felt the</p> <p>13 \$16 billion was a number that came later</p> <p>14 in the day. So I didn't get into a</p> <p>15 breaking out, you know, how much, you</p> <p>16 know, was pit cleanup, how much were the</p> <p>17 other components. We had done some of</p> <p>18 that in the mediation statement breaking</p> <p>19 out kind of rough guesstimates of those</p> <p>20 demands. But it obviously was a home run,</p> <p>21 if you will, from the plaintiffs'</p> <p>22 perspective. He apparently had gone for</p> <p>23 the plaintiffs' version of the case.</p> <p>24 Q. Did Mr. Donziger make any</p> <p>25 statements to you at or about the time</p>	<p style="text-align: right;">277</p> <p>1 J. KOHN</p> <p>2 point blank what is going to happen with</p> <p>3 this thing in Denver or this discovery of</p> <p>4 Stratus, that certainly would have been an</p> <p>5 opportunity to say well, actually, Stratus</p> <p>6 wrote the whole report in the first person</p> <p>7 or, you know, had it been something I was</p> <p>8 aware of, it was an opportunity to say</p> <p>9 what are you talking about, Joe? You know</p> <p>10 we talked about it for years and it was</p> <p>11 perfectly okay to do that.</p> <p>12 But instead it was no, there</p> <p>13 may be something that is going to be a</p> <p>14 little embarrassing that we are going to</p> <p>15 have to address.</p> <p>16 Q. Were you aware that plaintiffs</p> <p>17 objected to the Cabrera report as unduly</p> <p>18 favorable to Chevron?</p> <p>19 A. I knew there was a period of</p> <p>20 comments. I knew the report was</p> <p>21 increased. I was not, you know, focusing</p> <p>22 on those kinds of issues or that process.</p> <p>23 I was not, you know, consulted about the</p> <p>24 particular approach to take on that.</p> <p>25 Sort of second half of '08, as</p>

70 (Pages 274 to 277)

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<p style="text-align: right;">278</p> <p>1 J. KOHN</p> <p>2 of July of '08 my focus was on trying to</p> <p>3 see if there was a way to resolve this</p> <p>4 long-running case. We had had the</p> <p>5 rudimentary beginnings with the mediation</p> <p>6 in November of '07. There was then a</p> <p>7 process where we understood that Chevron</p> <p>8 was insistent that the government of</p> <p>9 Ecuador participate in any mediation and</p> <p>10 the mediator was prepared to do that and</p> <p>11 wanted to try to facilitate it.</p> <p>12 We finally got word in July</p> <p>13 that the government would, I heard that</p> <p>14 from Mr. Donziger, he said he had gotten</p> <p>15 some word the government was willing to</p> <p>16 send a letter to Jonathan Marks if</p> <p>17 Jonathan Marks were to request them to do</p> <p>18 that, they would do that. We then had</p> <p>19 several conference calls with Mr. Cullen,</p> <p>20 Mr. James was on some of them, about next</p> <p>21 steps. That finally culminated in some</p> <p>22 phone calls from Mr. James to me in the</p> <p>23 fall or winter of '08.</p> <p>24 So that was my thinking, get</p> <p>25 the case done, glad to hear we had finally</p>	<p style="text-align: right;">280</p> <p>1 J. KOHN</p> <p>2 Cabrera report and then in drafting,</p> <p>3 ghostwriting the Cabrera response to those</p> <p>4 objections.</p> <p>5 During the time that they were</p> <p>6 ghostwriting Cabrera's response to the</p> <p>7 objections, September/October '08, what</p> <p>8 was your understanding as to what it was</p> <p>9 that Stratus was doing and billing you</p> <p>10 for?</p> <p>11 A. Several things. I understood</p> <p>12 that there was a process of some further</p> <p>13 comments that the parties had a right to</p> <p>14 comment upon the Cabrera report, so I</p> <p>15 believe they had some involvement with</p> <p>16 that.</p> <p>17 I believe there was still the</p> <p>18 notion of the final submission by the</p> <p>19 plaintiffs, again, after the Cabrera</p> <p>20 report, what was referred to by the</p> <p>21 Ecuadorian lawyers as the Alegato, but</p> <p>22 what I understood would be the final</p> <p>23 collection of all the evidence, like the</p> <p>24 final trial brief. I understood they were</p> <p>25 performing some work with those issues.</p>
<p style="text-align: right;">279</p> <p>1 J. KOHN</p> <p>2 gotten over this phase of the expert</p> <p>3 report being issued, you know, kind of</p> <p>4 what's left to do? Why does it take this</p> <p>5 long? Why are we haggling for more money?</p> <p>6 Any discussions that I had with</p> <p>7 Mr. Donziger or the plaintiffs' team were,</p> <p>8 you know, he had a huge claim here, we had</p> <p>9 to be talking about how do you reduce that</p> <p>10 to some reasonable level that might be</p> <p>11 accomplishable in a settlement</p> <p>12 negotiation.</p> <p>13 So long-winded answer to your</p> <p>14 question is that I didn't particularly</p> <p>15 concern myself with objections or</p> <p>16 increasing this number. It was more than</p> <p>17 adequate for what I saw could be any</p> <p>18 possible basis for a resolution of the</p> <p>19 litigation.</p> <p>20 Q. After Cabrera had filed his</p> <p>21 report in April '09 --</p> <p>22 MS. HAMILL: April '08?</p> <p>23 MS. NEUMAN: '08, I'm sorry.</p> <p>24 Q. -- Stratus continued to do work</p> <p>25 first on the plaintiffs' objections to the</p>	<p style="text-align: right;">281</p> <p>1 J. KOHN</p> <p>2 There was ongoing work that</p> <p>3 they did on tours, some press material.</p> <p>4 There were shorter documents and shorter</p> <p>5 reports that they were preparing on</p> <p>6 certain subissues that were some for kind</p> <p>7 of public relations consumption, some for</p> <p>8 what I call preparation for any kind of</p> <p>9 enforcement action that as a U.S.-based</p> <p>10 expert firm that I relied upon or</p> <p>11 considered to be competently doing their</p> <p>12 job at the time, that they would be able</p> <p>13 to, you know, put into a straightforward,</p> <p>14 understandable format the voluminous</p> <p>15 record in the case.</p> <p>16 I guess by that time there</p> <p>17 wasn't really active work with Marks or</p> <p>18 that process had kind of ground to a halt.</p> <p>19 Frankly at that point in time I began to</p> <p>20 ask that very question, why do we need to</p> <p>21 sort of have them on a continual sort of</p> <p>22 monthly basis? Can't we sort of bring</p> <p>23 some of these costs to an end?</p> <p>24 You know, some of the reference</p> <p>25 in the November '09 letter is about, you</p>

71 (Pages 278 to 281)

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<p style="text-align: right;">282</p> <p>1 J. KOHN</p> <p>2 know, the budgets, the issues over</p> <p>3 continued funding at those levels. In</p> <p>4 conversations I had with Donziger, he</p> <p>5 would just reiterate that they were -- you</p> <p>6 know, a lot of things happening in the</p> <p>7 case, there may be still some motion</p> <p>8 practice, I think there are still some</p> <p>9 requests for additional inspections, there</p> <p>10 is some follow-up inspections, at least</p> <p>11 according to Donziger, and that Beltman</p> <p>12 was just, you know, invaluable to that</p> <p>13 kind of process. 60 Minutes got involved</p> <p>14 at some point and he was invaluable to</p> <p>15 that process. He had to spend time there.</p> <p>16 He had to explain all the records to them.</p> <p>17 So it was kind of parsed out</p> <p>18 into those hodgepodge of assignments.</p> <p>19 Eventually those kind of conversations did</p> <p>20 culminate in some exchange of e-mails with</p> <p>21 Beltman and Donziger about -- where I</p> <p>22 finally said to Beltman, look, I need to</p> <p>23 know before you start to undertake any</p> <p>24 more assignments exactly what you are</p> <p>25 doing and how much it is going to cost.</p>	<p style="text-align: right;">284</p> <p>1 J. KOHN</p> <p>2 exhibit chronologically.</p> <p>3 Q. Dated August 9th of 2010, what</p> <p>4 led to your sending the August 9th, 2010</p> <p>5 letter?</p> <p>6 A. This was sent, as it says in</p> <p>7 the first sentence, in response to a</p> <p>8 letter dated July 29th, 2010 which I had</p> <p>9 received from the individuals who are the</p> <p>10 addressees on this letter. So I had</p> <p>11 received that letter from the plaintiff</p> <p>12 group, Mr. Fajardo, Mr. Yanza, the others,</p> <p>13 and this was in response to that.</p> <p>14 Q. At the bottom of the first</p> <p>15 paragraph on the August 9th, 2010 letter,</p> <p>16 you state "not only did we not know of any</p> <p>17 of this conduct, it is contrary to</p> <p>18 assurances that Donziger and you made to</p> <p>19 us on numerous occasions."</p> <p>20 Do you see that?</p> <p>21 A. Yes, I do see that.</p> <p>22 Q. Are you referring there to the</p> <p>23 assurances that Mr. Donziger had given you</p> <p>24 that there had been no improper contact</p> <p>25 with Mr. Cabrera at any time by the</p>
<p style="text-align: right;">283</p> <p>1 J. KOHN</p> <p>2 because it seemed that they were just kind</p> <p>3 of running the meter at that point.</p> <p>4 Q. After the plaintiffs objected</p> <p>5 to the Cabrera report in November of '08,</p> <p>6 Cabrera issued his response and increased</p> <p>7 the damage award from \$16 billion to \$27</p> <p>8 billion. Did you have any knowledge about</p> <p>9 the plaintiffs' team, including Stratus,</p> <p>10 ghostwriting Cabrera's November 2008</p> <p>11 report?</p> <p>12 A. No, ma'am, none.</p> <p>13 Q. Did you have any conversations</p> <p>14 with Mr. Donziger after the second Cabrera</p> <p>15 report came out about who had authored</p> <p>16 that report?</p> <p>17 A. No.</p> <p>18 Q. In your first letter in Exhibit</p> <p>19 1629 --</p> <p>20 A. Are you referring to the August</p> <p>21 9, 2010?</p> <p>22 Q. Yes.</p> <p>23 THE SPECIAL MASTER: You mean</p> <p>24 the last letter?</p> <p>25 THE WITNESS: The first in the</p>	<p style="text-align: right;">285</p> <p>1 J. KOHN</p> <p>2 plaintiffs' team?</p> <p>3 A. Yeah, I believe I've covered</p> <p>4 all of those. I may have omitted I think</p> <p>5 after the February '09 meeting, although</p> <p>6 we did discuss that meeting with Mr. James</p> <p>7 and Mr. Cullen, myself and Mr. Barnes,</p> <p>8 that both Mr. Barnes and I then brought</p> <p>9 Mr. Donziger up to date as to what</p> <p>10 happened at that meeting and the same</p> <p>11 discussion occurred about it's nothing.</p> <p>12 Chevron, they've got nothing. They are</p> <p>13 grasping at straws. They have this</p> <p>14 photograph of Cabrera wandering around the</p> <p>15 pits. But other than -- nothing other</p> <p>16 than I believe what I have already</p> <p>17 testified to.</p> <p>18 Q. And in your view, all of those</p> <p>19 statements made to you by Mr. Donziger are</p> <p>20 false, were false at the time they were</p> <p>21 made?</p> <p>22 A. I now know them to be false. I</p> <p>23 did not realize that at the time.</p> <p>24 Q. Have you and Mr. Barnes had any</p> <p>25 discussions regarding the fact that</p>

72 (Pages 282 to 285)

<p style="text-align: right;">286</p> <p>1 J. KOHN</p> <p>2 Mr. Donziger misled you about Cabrera?</p> <p>3 A. I have had several discussions</p> <p>4 with Mr. Barnes after November '09. I</p> <p>5 don't think I had voiced specifically as</p> <p>6 your question just said about being misled</p> <p>7 about Mr. Cabrera. I discussed with him</p> <p>8 the bigger picture of the utter mess that</p> <p>9 the case had become and Mr. Donziger's</p> <p>10 role in doing that.</p> <p>11 Q. Did you and Mr. -- did you</p> <p>12 discuss with Mr. Barnes that you believed</p> <p>13 that the plaintiffs ghostwriting of the</p> <p>14 Cabrera report was improper?</p> <p>15 A. In terms of the sort of final</p> <p>16 nail on the ghostwriting has been a fairly</p> <p>17 recent development in my view in terms of</p> <p>18 becoming aware of that as a, you know,</p> <p>19 finality. I have not spoken to Mr. Barnes</p> <p>20 probably since the fall of 2010. So I</p> <p>21 think things were starting to kind of come</p> <p>22 out, but they hadn't been quite that</p> <p>23 definitive as you asked.</p> <p>24 Q. Did Mr. Barnes ever convey to</p> <p>25 you that he had been misled by</p>	<p style="text-align: right;">288</p> <p>1 J. KOHN</p> <p>2 forward with respect to the 1782 discovery</p> <p>3 that was under way.</p> <p>4 There was not, you know,</p> <p>5 defense of the Calmbacher deposition.</p> <p>6 There was all this flailing away in the</p> <p>7 Stratus matter by the Stratus and</p> <p>8 plaintiff group. I don't recall him ever,</p> <p>9 you know, using that kind of phraseology</p> <p>10 to me, I also have been misled. He felt</p> <p>11 that Donziger had sort of mismanaged or</p> <p>12 mishandled the case, had gotten in over</p> <p>13 his head. It was more in those kind of</p> <p>14 nature. He didn't have the wherewithal or</p> <p>15 the law firm that could move the case</p> <p>16 forward.</p> <p>17 Q. Is it clear to you as you sit</p> <p>18 here today that you were misled by</p> <p>19 Mr. Donziger?</p> <p>20 A. I do believe that, yes.</p> <p>21 Q. In Exhibit 1629 on the first</p> <p>22 page of the August 9th, 2010 letter you</p> <p>23 state "His actions," referring to</p> <p>24 Mr. Donziger, "in turn, have been driven</p> <p>25 by what appear to us to be his efforts to</p>
<p style="text-align: right;">287</p> <p>1 J. KOHN</p> <p>2 Mr. Donziger?</p> <p>3 A. He had discussions with me in</p> <p>4 the period of time prior to my April</p> <p>5 meeting with -- April 2010 meeting with</p> <p>6 Pablo Fajardo and Yanza and Mr. Piaguaje</p> <p>7 and prior to the meeting I had with</p> <p>8 Donziger at the Susman firm where he</p> <p>9 stated that he believed Donziger should</p> <p>10 withdraw from the case and that he had</p> <p>11 either some suggestions or ideas of other</p> <p>12 law firms that might be able to get</p> <p>13 involved.</p> <p>14 And he said he was speaking</p> <p>15 with Donziger about that. I don't think</p> <p>16 he used the phrase I believe I have been</p> <p>17 misled by Donziger, but at least at that</p> <p>18 point he supported the notion of Donziger</p> <p>19 withdrawing from the case.</p> <p>20 Q. Did Mr. Barnes articulate why</p> <p>21 he thought Donziger should withdraw?</p> <p>22 A. Not in so many words. I think</p> <p>23 it was more a cumulation of sort of --</p> <p>24 partly in my mind was still kind of just</p> <p>25 the mismanagement of the matter going</p>	<p style="text-align: right;">289</p> <p>1 J. KOHN</p> <p>2 control all matters in the case, make all</p> <p>3 decisions, keep our firm in the dark,</p> <p>4 withhold documents and information from</p> <p>5 us, interfere with and block our efforts</p> <p>6 to meet and discuss issues in the case in</p> <p>7 a meaningful way, keep secrets from us,</p> <p>8 prevent questioning of any of his actions</p> <p>9 or decisions and prevent discussion</p> <p>10 between and among professionals working</p> <p>11 for you."</p> <p>12 Was that your honest assessment</p> <p>13 of what Mr. Donziger had been doing on the</p> <p>14 case?</p> <p>15 A. As of this period of time, yes.</p> <p>16 Obviously earlier periods of time I</p> <p>17 trusted him very much.</p> <p>18 Q. And you now feel that trust was</p> <p>19 abused?</p> <p>20 A. Absolutely, yes.</p> <p>21 Q. On page 4 of your August 9th,</p> <p>22 2010 letter, in paragraph 2 you state</p> <p>23 "Finally, and most disturbing and shocking</p> <p>24 to our firm are recent revelations in</p> <p>25 Chevron's discovery of the extent of</p>

73 (Pages 286 to 289)

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<p style="text-align: right;">290</p> <p>1 J. KOHN</p> <p>2 contacts with Cabrera, which our firm had</p> <p>3 no knowledge of and never would have</p> <p>4 approved."</p> <p>5 Is that an accurate statement?</p> <p>6 A. Yes.</p> <p>7 Q. You go on to say "Indeed, it</p> <p>8 appears to me that the outright refusal to</p> <p>9 provide us with any information about</p> <p>10 Cabrera's report or intended to hide from</p> <p>11 us what may have been outrageously</p> <p>12 improper conduct, we had several times</p> <p>13 over the course of the last year indicated</p> <p>14 that one matter that needed to be fully</p> <p>15 discussed and explored was the experts'</p> <p>16 reports and recommendations in the context</p> <p>17 of discussing strategically how to frame a</p> <p>18 final submission to the court that might</p> <p>19 result in a defensible judgment. As with</p> <p>20 everything else, we were frustrated in our</p> <p>21 efforts to have those conversations, but</p> <p>22 at the time we simply assumed Cabrera's</p> <p>23 work was sloppy and overambitious but had</p> <p>24 been done independently."</p> <p>25 Do you see that?</p>	<p style="text-align: right;">292</p> <p>1 J. KOHN</p> <p>2 recommended in this letter that we are</p> <p>3 referring to in August 2010 and possibly</p> <p>4 some earlier ones, which was the</p> <p>5 plaintiffs -- my recommendation would be</p> <p>6 that anyone who had any involvement with</p> <p>7 such activity needed to fess up, withdraw</p> <p>8 from the case, come clean, tell the whole</p> <p>9 story to the court in Ecuador and see if</p> <p>10 there was some way to salvage the matter</p> <p>11 or move forward. That would have been my</p> <p>12 recommendation.</p> <p>13 Q. To let the court in Ecuador</p> <p>14 know the full and complete extent to which</p> <p>15 the plaintiffs had been involved with</p> <p>16 Cabrera?</p> <p>17 A. Correct, to lay all that out</p> <p>18 and to say that the people who were</p> <p>19 involved in it were no longer involved in</p> <p>20 it. They will be terminated. They will</p> <p>21 have no further interest. And try to have</p> <p>22 some new representation that might be able</p> <p>23 to salvage some result or some recovery</p> <p>24 for the plaintiffs.</p> <p>25 Q. You go on to say in the last</p>
<p style="text-align: right;">291</p> <p>1 J. KOHN</p> <p>2 A. Yes.</p> <p>3 Q. Is that accurate?</p> <p>4 A. Yes. I think you just slightly</p> <p>5 misread, "overly ambitious," and you said</p> <p>6 "over," but I agree with that.</p> <p>7 Q. After Cabrera's report came</p> <p>8 out, you were interviewed and referred to</p> <p>9 him as the court's independent expert.</p> <p>10 Do you recall that?</p> <p>11 A. Yes.</p> <p>12 Q. If you had known that the</p> <p>13 plaintiffs' team and Stratus had written</p> <p>14 Mr. Cabrera's report and provided it to</p> <p>15 him the day before he filed it, would you</p> <p>16 have ever referred to him as an</p> <p>17 independent expert?</p> <p>18 A. No, and I would not have been</p> <p>19 interviewed. I would not have been</p> <p>20 working on the matter.</p> <p>21 Q. You would have terminated your</p> <p>22 firm's involvement in the matter had you</p> <p>23 known that's what was going on?</p> <p>24 A. Well, I probably would have</p> <p>25 taken the same kind of action I think I</p>	<p style="text-align: right;">293</p> <p>1 J. KOHN</p> <p>2 paragraph on the same page "Pablo and</p> <p>3 Luis" -- that's referring to Pablo Fajardo</p> <p>4 and Luis Yanza?</p> <p>5 A. Yes.</p> <p>6 Q. -- "made similar assurances</p> <p>7 during our meeting in April. It is now</p> <p>8 clear in hindsight that those statements</p> <p>9 were blatant lies intended to induce our</p> <p>10 firm into paying money" -- I'm sorry,</p> <p>11 "more money for litigation expenses."</p> <p>12 Do you see that?</p> <p>13 A. Yes.</p> <p>14 Q. And do you believe that Pablo</p> <p>15 Fajardo and Luis Yanza lied to you in</p> <p>16 April of 2010 to induce your firm to</p> <p>17 continue to fund the litigation?</p> <p>18 MR. GOMEZ: Excuse me, what</p> <p>19 page are we on?</p> <p>20 MS. HAMILL: 4 of 22.</p> <p>21 A. The answer is yes, I do believe</p> <p>22 that. It is the meeting I referred to</p> <p>23 earlier today.</p> <p>24 Q. Do you think Mr. Donziger also</p> <p>25 hid from you what he had arranged to have</p>

74 (Pages 290 to 293)

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<p style="text-align: right;">294</p> <p>1 J. KOHN</p> <p>2 Stratus do in terms of ghostwriting the</p> <p>3 Cabrera report so that you would fund</p> <p>4 Stratus' work because he knew that if you</p> <p>5 knew what they were really doing you</p> <p>6 wouldn't fund it?</p> <p>7 A. I do believe that, and I</p> <p>8 believe Stratus did it for the same</p> <p>9 reason.</p> <p>10 Q. If Mr. Donziger testified that</p> <p>11 Joe Kohn knew at the time that it was</p> <p>12 important to keep plaintiffs' involvement</p> <p>13 in the preparation of the Cabrera report</p> <p>14 confidential, would that testimony have</p> <p>15 been true or false?</p> <p>16 A. Can I see the actual question</p> <p>17 and answer?</p> <p>18 Q. Yes. I'm going to show the</p> <p>19 witness page 3524 of the Donziger</p> <p>20 deposition directing him to lines 7</p> <p>21 through 11.</p> <p>22 MS. HAMILL: What page number,</p> <p>23 I'm sorry?</p> <p>24 MS. NEUMAN: 3524.</p> <p>25 (Witness perusing document.)</p>	<p style="text-align: right;">296</p> <p>1 J. KOHN</p> <p>2 have testified earlier, I did have an</p> <p>3 understanding that certain materials could</p> <p>4 be prepared by the parties' experts and</p> <p>5 handled in an appropriate or lawful or</p> <p>6 transparent way, and the expert had the</p> <p>7 opportunity to either accept or reject or</p> <p>8 accept in part or reject in part the</p> <p>9 position of the parties.</p> <p>10 But I did not understand that</p> <p>11 it was being written as if it was his</p> <p>12 conclusion or written in the first person.</p> <p>13 But I did understand, and I think there is</p> <p>14 material earlier, you know, the question</p> <p>15 on the preceding page, "He knew the damage</p> <p>16 assessments prepared by the plaintiffs</p> <p>17 were being given to Cabrera?"</p> <p>18 Again, not given in some</p> <p>19 surreptitious way or some clandestine way,</p> <p>20 but I understood that it was perfectly</p> <p>21 appropriate for the plaintiffs to have</p> <p>22 their advocacy that we would be heard by</p> <p>23 this expert in some appropriate manner.</p> <p>24 So it is a little fuzzy in some</p> <p>25 of his "I believe so's" or "could have</p>
<p style="text-align: right;">295</p> <p>1 J. KOHN</p> <p>2 A. Okay, you are referring to the</p> <p>3 answer at line 11?</p> <p>4 Q. Yes. The question is "And Joe</p> <p>5 Kohn knew at the time that it was</p> <p>6 important to keep plaintiffs' involvement</p> <p>7 in the preparation of Cabrera's report</p> <p>8 confidential, correct?</p> <p>9 "Answer: I think so."</p> <p>10 Did you know any such thing?</p> <p>11 A. No, I did not.</p> <p>12 Q. Right above that, Mr. Donziger</p> <p>13 testifies as follows:</p> <p>14 "Question: And he" --</p> <p>15 referring to you -- "knew that the</p> <p>16 plaintiffs' team was providing them to</p> <p>17 Cabrera to incorporate verbatim into his</p> <p>18 final report, correct?</p> <p>19 "Answer: I believe so."</p> <p>20 Did you know that Stratus was</p> <p>21 providing things for Cabrera to</p> <p>22 incorporate verbatim into his final</p> <p>23 report?</p> <p>24 A. No, I didn't know that as</p> <p>25 phrased in that question. I think as I</p>	<p style="text-align: right;">297</p> <p>1 J. KOHN</p> <p>2 been" kind of answers.</p> <p>3 Q. But it is clear to you that you</p> <p>4 were never told that the plaintiffs'</p> <p>5 involvement in the preparation of the</p> <p>6 Cabrera report was being kept confidential</p> <p>7 or secret or anything like that?</p> <p>8 A. No.</p> <p>9 MS. HAMILL: Can you read back</p> <p>10 the question and answer because I think a</p> <p>11 no to that might end up being one of those</p> <p>12 double negatives.</p> <p>13 (The record was read.)</p> <p>14 A. To supplement that, I was never</p> <p>15 told that.</p> <p>16 Q. Thank you.</p> <p>17 What was Amazon Watch's</p> <p>18 relationship to the plaintiffs' team?</p> <p>19 A. They were an independent</p> <p>20 environmental organization that supported</p> <p>21 the cause of the plaintiffs to obtain some</p> <p>22 redress or some environmental</p> <p>23 rehabilitation in the area where they</p> <p>24 lived.</p> <p>25 Q. Did Kohn Swift & Graf fund any</p>

75 (Pages 294 to 297)

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<p style="text-align: right;">298</p> <p>1 J. KOHN</p> <p>2 of Amazon Watch's activities?</p> <p>3 A. I believe we contributed to</p> <p>4 certain programs or campaigns that they</p> <p>5 had relative to the Ecuadorian litigation</p> <p>6 or the Ecuadorian environmental issue.</p> <p>7 Q. Did Kohn Swift & Graf ever</p> <p>8 review Amazon Watch's materials related to</p> <p>9 the Ecuador case before they were</p> <p>10 published or publicized?</p> <p>11 A. I'm not aware of doing so</p> <p>12 before. I think we did receive certain</p> <p>13 materials after, but I had no recollection</p> <p>14 anyway of any pre-review of any reports or</p> <p>15 newsletters or anything that they would</p> <p>16 put out.</p> <p>17 Q. Did to your knowledge</p> <p>18 Mr. Donziger have the ability to review or</p> <p>19 approve Amazon Watch materials before they</p> <p>20 were published?</p> <p>21 A. I do not have knowledge of</p> <p>22 that. I do know that he, you know, spent</p> <p>23 time and worked with them. I would be</p> <p>24 somewhat surprised if they would have</p> <p>25 ceded control or approval of their</p>	<p style="text-align: right;">300</p> <p>1 J. KOHN</p> <p>2 relate to, and my recollection is</p> <p>3 certainly that it was focused on the</p> <p>4 Ecuador situation. It may have had some</p> <p>5 broader effect on people of the Amazon</p> <p>6 generally, but I think it was focused on</p> <p>7 Ecuador.</p> <p>8 Q. Were the Amazon Watch people</p> <p>9 ever directed by anyone on the plaintiffs'</p> <p>10 team to put personal pressure on Chevron</p> <p>11 executives?</p> <p>12 A. I'm not sure what you mean by</p> <p>13 personal pressure. There was certainly a</p> <p>14 series and range of protests, marches,</p> <p>15 activity around the shareholder -- annual</p> <p>16 shareholder meeting of Chevron that Amazon</p> <p>17 Watch participated in for the purpose of</p> <p>18 drawing attention to this matter and</p> <p>19 getting the attention of Chevron to</p> <p>20 consider a negotiated resolution as</p> <p>21 opposed to litigation forever.</p> <p>22 Q. Were you involved in any</p> <p>23 discussions with Amazon Watch personnel</p> <p>24 about targeting particular individuals at</p> <p>25 Chevron?</p>
<p style="text-align: right;">299</p> <p>1 J. KOHN</p> <p>2 materials. I did understand that they</p> <p>3 were a separate functioning organization</p> <p>4 that had other projects and causes other</p> <p>5 than Ecuador. And Atossa, the director or</p> <p>6 head of it, was a pretty strong-willed and</p> <p>7 strong-minded individual and I don't think</p> <p>8 she would have acceded to Donziger coming</p> <p>9 in and approving things.</p> <p>10 Obviously if there were some</p> <p>11 things that related to some technical</p> <p>12 aspect of the litigation or what the</p> <p>13 plaintiffs' legal team was proposing, it</p> <p>14 might be appropriate to have his comment</p> <p>15 or review or approval beforehand.</p> <p>16 Q. When Kohn Swift & Graf would</p> <p>17 make what you have called contributions to</p> <p>18 Amazon Watch, was it with the</p> <p>19 understanding that those would be spent on</p> <p>20 activities related to campaigning against</p> <p>21 Chevron and on behalf of the Ecuadorian</p> <p>22 plaintiffs in particular?</p> <p>23 A. I believe that they had written</p> <p>24 proposals as to what this particular</p> <p>25 campaign or activities or activism would</p>	<p style="text-align: right;">301</p> <p>1 J. KOHN</p> <p>2 A. I don't recall any discussions,</p> <p>3 but I do recall some materials or</p> <p>4 documents that, you know, that highlighted</p> <p>5 the president of Chevron. Again, I don't</p> <p>6 know whether that was in conjunction with</p> <p>7 the shareholder meeting or otherwise. But</p> <p>8 I have some recollection of that.</p> <p>9 Beyond that, I don't have</p> <p>10 the -- you know, I would assume that it</p> <p>11 might have also included board members or</p> <p>12 other decision makers, but certainly the</p> <p>13 president, President O'Reilly, was the one</p> <p>14 that I recall.</p> <p>15 Q. And was the purpose of making</p> <p>16 these campaign materials that targeted</p> <p>17 President O'Reilly, for example, to put</p> <p>18 pressure on Chevron to settle the Ecuador</p> <p>19 litigation?</p> <p>20 A. I never viewed that it would</p> <p>21 sort of take that final leap, to put</p> <p>22 pressure to settle. I viewed it as a way</p> <p>23 to get the attention of the decision</p> <p>24 makers so that they would go to the law</p> <p>25 department and say this case is getting to</p>

76 (Pages 298 to 301)

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<p style="text-align: right;">302</p> <p>1 J. KOHN</p> <p>2 be a real pain in the neck and an</p> <p>3 annoyance, what do these plaintiffs want,</p> <p>4 is there some track to get rid of this</p> <p>5 short of having this litigation go on.</p> <p>6 Q. So you viewed putting pressure</p> <p>7 on the executives as a way to get their</p> <p>8 attention so they would engage with the</p> <p>9 law department and then find a way to</p> <p>10 resolve the lawsuit?</p> <p>11 A. So that they would consider the</p> <p>12 settlement option, yes.</p> <p>13 Q. Did you ever review or approve</p> <p>14 any submission that Amazon Watch made to</p> <p>15 the Securities and Exchange Commission?</p> <p>16 A. I wouldn't say we had approved</p> <p>17 it. I certainly have seen such documents,</p> <p>18 whether from Amazon Watch. You know, as I</p> <p>19 sit here today, I couldn't tell you there</p> <p>20 was an Amazon Watch submission, but I do</p> <p>21 remember there were submissions on behalf</p> <p>22 of either organizations or the plaintiff</p> <p>23 group or in some cases both to the SEC.</p> <p>24 Q. And did you see the Amazon</p> <p>25 Watch submissions to the SEC before they</p>	<p style="text-align: right;">304</p> <p>1 J. KOHN</p> <p>2 a letter, not a letter. If you look at</p> <p>3 the bottom of the first page, you will see</p> <p>4 track marks.</p> <p>5 MS. NEUMAN: Yes, it is a</p> <p>6 draft.</p> <p>7 MR. GOMEZ: Excuse me, do we</p> <p>8 know if this document has been produced?</p> <p>9 MS. NEUMAN: It has been</p> <p>10 produced. I don't know why it was printed</p> <p>11 without the Bates number. We are checking</p> <p>12 that.</p> <p>13 MS. HAMILL: Do you know which</p> <p>14 production it came out of?</p> <p>15 MS. NEUMAN: No, because I</p> <p>16 don't have the Bates number.</p> <p>17 THE SPECIAL MASTER: Excuse me,</p> <p>18 do we know who it was produced by? It is</p> <p>19 very hard to get a production number off a</p> <p>20 page.</p> <p>21 MS. NEUMAN: Let's set that</p> <p>22 aside while we investigate it further.</p> <p>23 Q. I'm going to hand the witness a</p> <p>24 document previously marked as Exhibit</p> <p>25 2222, which is entitled Waiver of Rights</p>
<p style="text-align: right;">303</p> <p>1 J. KOHN</p> <p>2 were filed?</p> <p>3 A. I don't remember doing so. It</p> <p>4 is possible, but I don't recall.</p> <p>5 Q. And do you know whether those</p> <p>6 submissions were drafted by Amazon Watch</p> <p>7 or Mr. Donziger?</p> <p>8 A. I do not know who the drafters</p> <p>9 of those papers were.</p> <p>10 MS. NEUMAN: I'm going to show</p> <p>11 the witness a document I'm going to mark</p> <p>12 as Exhibit 4008.</p> <p>13 MR. GOMEZ: Can I get a reading</p> <p>14 of the time, please?</p> <p>15 MS. NEUMAN: A February 28th,</p> <p>16 2006 --</p> <p>17 THE VIDEOGRAPHER: We have gone</p> <p>18 five hours 24 minutes.</p> <p>19 MS. NEUMAN: -- letter from</p> <p>20 Amazon Watch to Christopher Cox, Chairman,</p> <p>21 U.S. Securities and Exchange Commission.</p> <p>22 (Plaintiff's Exhibit 4008</p> <p>23 marked for identification.)</p> <p>24 THE SPECIAL MASTER: Excuse me,</p> <p>25 Ms. Neuman, this appears to be a draft of</p>	<p style="text-align: right;">305</p> <p>1 J. KOHN</p> <p>2 Executed Before Notaries Public of</p> <p>3 Massachusetts and Pennsylvania</p> <p>4 Respectively.</p> <p>5 If you turn to the last page of</p> <p>6 Exhibit 2222, Mr. Kohn, there is a</p> <p>7 signature block for a Joseph C. Kohn and a</p> <p>8 signature. Is that your signature?</p> <p>9 A. Yes, it is.</p> <p>10 Q. This document is dated November</p> <p>11 20th of 1996?</p> <p>12 A. Yes.</p> <p>13 Q. And it is an agreement which</p> <p>14 includes a waiver of rights, in paragraph</p> <p>15 2 on page 2, "This waiver includes the</p> <p>16 impossibility of filing any court action</p> <p>17 against the Ecuadorian state,</p> <p>18 PetroEcuador, and its affiliate companies</p> <p>19 or any other Ecuadorian public sector</p> <p>20 institution or agency either in the United</p> <p>21 States of America or in Ecuador."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 MS. HAMILL: This predates the</p> <p>25 time period, the scope of the inquiry</p>

77 (Pages 302 to 305)

<p style="text-align: right;">306</p> <p>1 J. KOHN</p> <p>2 here. But I will let you ask your</p> <p>3 question.</p> <p>4 MS. NEUMAN: We didn't ask for</p> <p>5 this document from Mr. Kohn.</p> <p>6 Q. This is an agreement that you</p> <p>7 and Mr. Bonifaz entered into with the</p> <p>8 Republic of Ecuador in November of 1996?</p> <p>9 A. We entered. I'm just</p> <p>10 confirming who the other parties are. It</p> <p>11 is the Republic, whether it also included</p> <p>12 PetroEcuador as a separate entity, let me</p> <p>13 just see.</p> <p>14 (Witness perusing document.)</p> <p>15 A. Yeah, I would say it is the</p> <p>16 Republic of Ecuador, PetroEcuador, and</p> <p>17 affiliates of PetroEcuador are the other</p> <p>18 parties to the case, to this agreement.</p> <p>19 Q. And who from the -- were you</p> <p>20 personally involved in negotiation of this</p> <p>21 agreement?</p> <p>22 A. No.</p> <p>23 Q. Did you have any communications</p> <p>24 with anyone from the Republic of Ecuador</p> <p>25 in connection with reaching this</p>	<p style="text-align: right;">308</p> <p>1 J. KOHN</p> <p>2 understand the objection.</p> <p>3 MR. GOMEZ: Well, he is being</p> <p>4 asked --</p> <p>5 THE SPECIAL MASTER: I think if</p> <p>6 you are going to into detail here, I think</p> <p>7 your witness ought to leave the room.</p> <p>8 (Witness departs the room.)</p> <p>9 THE SPECIAL MASTER: As I hear</p> <p>10 the question, it simply asked him to</p> <p>11 explain what this document is. And she is</p> <p>12 shaking her head.</p> <p>13 MS. NEUMAN: Yes, that is my</p> <p>14 intention, and I believe the question is</p> <p>15 appropriate in that regard.</p> <p>16 MR. GOMEZ: I think the</p> <p>17 document speaks for itself. In addition,</p> <p>18 Mr. Kohn did not sign this document. His</p> <p>19 mental impressions as an attorney at the</p> <p>20 time that it was executed is a matter of</p> <p>21 privilege.</p> <p>22 MS. NEUMAN: He did sign it.</p> <p>23 MR. GOMEZ: I'm sorry?</p> <p>24 MS. NEUMAN: It is notarized.</p> <p>25 THE SPECIAL MASTER: He signed</p>
<p style="text-align: right;">307</p> <p>1 J. KOHN</p> <p>2 agreement?</p> <p>3 A. No. My only discussions were</p> <p>4 with Mr. Bonifaz about this topic and this</p> <p>5 document.</p> <p>6 Q. And pursuant to this document,</p> <p>7 the plaintiffs were agreeing not to sue</p> <p>8 the Republic of Ecuador or PetroEcuador</p> <p>9 for any of the contamination; is that</p> <p>10 right?</p> <p>11 A. It is -- well, lawyers say a</p> <p>12 document speaks for itself, but I think</p> <p>13 that is a portion of it or a</p> <p>14 characterization of at least some portion</p> <p>15 of the overall agreement, yes.</p> <p>16 Q. And in exchange for that, was</p> <p>17 the Republic of Ecuador supporting the</p> <p>18 plaintiffs' litigation against at that</p> <p>19 time Texaco?</p> <p>20 A. Well, it was taking this action</p> <p>21 with respect to this proposed or purported</p> <p>22 limited intervention.</p> <p>23 MR. GOMEZ: Objection,</p> <p>24 privileged.</p> <p>25 THE SPECIAL MASTER: I don't</p>	<p style="text-align: right;">309</p> <p>1 J. KOHN</p> <p>2 the document.</p> <p>3 MS. NEUMAN: His signature is</p> <p>4 notarized on both the English and Spanish</p> <p>5 versions.</p> <p>6 MR. GOMEZ: I'm sorry, I didn't</p> <p>7 see his signature.</p> <p>8 THE SPECIAL MASTER: Bring him</p> <p>9 back.</p> <p>10 MS. HAMILL: I have a question.</p> <p>11 Is the translation part of this</p> <p>12 case or was this document translated and</p> <p>13 is the understanding that Mr. Kohn signed</p> <p>14 both an English translation and the</p> <p>15 Spanish, or was the signature block from</p> <p>16 the Spanish transposed onto the English</p> <p>17 translation as a result of this</p> <p>18 litigation?</p> <p>19 MS. NEUMAN: I think the</p> <p>20 latter, because the translation is dated</p> <p>21 January 26th of 2011. Normally it says</p> <p>22 signature, whereas here they have</p> <p>23 recreated the electronic image of the</p> <p>24 signature.</p> <p>25 MS. HAMILL: So can you make</p>

78 (Pages 306 to 309)

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<p style="text-align: right;">310</p> <p>1 J. KOHN</p> <p>2 that clear on the record to Mr. Kohn what</p> <p>3 it is that he is looking at, because</p> <p>4 otherwise it appears that he signed --</p> <p>5 what he did was signed a Spanish version,</p> <p>6 the Spanish language version of this, not</p> <p>7 the English version. If you will make</p> <p>8 that clear.</p> <p>9 MR. VOSS: There may be an</p> <p>10 English version.</p> <p>11 MS. HAMILL: But not this one</p> <p>12 in particular.</p> <p>13 MR. VOSS: I don't believe so.</p> <p>14 MS. HAMILL: Is it okay to have</p> <p>15 him come back in?</p> <p>16 THE SPECIAL MASTER: Yes. Are</p> <p>17 you withdrawing your objection, Mr. Gomez?</p> <p>18 Mr. Gomez, are you withdrawing your</p> <p>19 objection?</p> <p>20 MR. GOMEZ: I'm thinking. No,</p> <p>21 I'm not withdrawing my objection.</p> <p>22 THE SPECIAL MASTER: As I read</p> <p>23 the question on my screen here, it is</p> <p>24 simply asking what the exchange was for</p> <p>25 this -- what the consideration was for the</p>	<p style="text-align: right;">312</p> <p>1 J. KOHN</p> <p>2 that effort is my recollection.</p> <p>3 And, again, without sounding</p> <p>4 too legalese, as set forth the document</p> <p>5 speaks, rather than characterize what that</p> <p>6 is, that's in the paper and we can all</p> <p>7 read it.</p> <p>8 I think your question,</p> <p>9 Ms. Neuman, was did they agree to, quote,</p> <p>10 support the plaintiffs' case. I would</p> <p>11 think that's an overly -- a slightly too</p> <p>12 broad way to describe it. I think they</p> <p>13 agreed to do this much, they didn't agree</p> <p>14 to support the plaintiffs' case in any old</p> <p>15 which way that they might be requested to</p> <p>16 at some point in the future.</p> <p>17 BY MS. NEUMAN:</p> <p>18 Q. Now, on the second page of the</p> <p>19 waiver, it states "At the same time</p> <p>20 Ecuador requests that the compensation</p> <p>21 sought in the above-mentioned case be paid</p> <p>22 exclusively by the company Texaco, and</p> <p>23 that the Republic of Ecuador, PetroEcuador</p> <p>24 and its affiliate companies, or any other</p> <p>25 Ecuadorian public sector institution or</p>
<p style="text-align: right;">311</p> <p>1 J. KOHN</p> <p>2 waiver as set forth in the document.</p> <p>3 That's all the question is</p> <p>4 asking. And if that's all the question is</p> <p>5 asking, your objection is overruled.</p> <p>6 MR. GOMEZ: I understood the</p> <p>7 question to be asking more than that.</p> <p>8 THE SPECIAL MASTER: Get him</p> <p>9 back in here and we are going to get the</p> <p>10 question right.</p> <p>11 (Witness returns to the room.)</p> <p>12 THE SPECIAL MASTER: Mr. Kohn,</p> <p>13 the question is what is the exchange of</p> <p>14 the consideration here? You are giving,</p> <p>15 that is you and your client are giving a</p> <p>16 waiver to the government of Ecuador and</p> <p>17 PetroEcuador and in exchange what are they</p> <p>18 doing?</p> <p>19 THE WITNESS: What they are</p> <p>20 doing is I believe set forth in the first</p> <p>21 subparagraph (c) in the Background</p> <p>22 section, that they were participating in a</p> <p>23 limited intervention or were agreeing to</p> <p>24 attempt to do so. I think initially they</p> <p>25 were rebuffed by the District Court in</p>	<p style="text-align: right;">313</p> <p>1 J. KOHN</p> <p>2 agency not, under any circumstances, be</p> <p>3 required to pay such compensation."</p> <p>4 Do you see that?</p> <p>5 A. Yes, I do.</p> <p>6 Q. And you understood the</p> <p>7 plaintiffs in having this agreement</p> <p>8 executed by yourself and Mr. Bonifaz were</p> <p>9 agreeing not to seek any compensation from</p> <p>10 Ecuador, PetroEcuador, in connection with</p> <p>11 the contamination?</p> <p>12 A. Yes, and that was consistent</p> <p>13 with the litigation strategy we had from</p> <p>14 the outset of that case, that we did not</p> <p>15 bring an action against PetroEcuador or</p> <p>16 the Republic of Ecuador, and there was</p> <p>17 litigation up to the Second Circuit about</p> <p>18 indispensable party issues and whether</p> <p>19 they were required to be brought in under</p> <p>20 I guess it was Rule 19 on indispensable</p> <p>21 parties, and the Second Circuit ultimately</p> <p>22 held that the Republic of Ecuador and</p> <p>23 PetroEcuador were not indispensable</p> <p>24 parties and the litigation could proceed</p> <p>25 against one or more tortfeasors.</p>

79 (Pages 310 to 313)

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<p style="text-align: right;">314</p> <p>1 J. KOHN</p> <p>2 This is somehow all tied up</p> <p>3 with that issue and phase is my</p> <p>4 recollection.</p> <p>5 MR. GOMEZ: Objection, move to</p> <p>6 strike everything after the response "yes"</p> <p>7 as privileged.</p> <p>8 THE SPECIAL MASTER: It is not</p> <p>9 privileged, but it is not responsive. It</p> <p>10 is stricken.</p> <p>11 Q. Mr. Kohn, you said Mr. Bonifaz</p> <p>12 negotiated Exhibit 2222; is that right?</p> <p>13 A. Yes.</p> <p>14 Q. Who did he negotiate it with?</p> <p>15 A. I believe the Attorney General</p> <p>16 of Ecuador, identified here, and he had</p> <p>17 U.S. counsel at the time, and I believe</p> <p>18 this may very well be the gentleman I had</p> <p>19 said in my earlier answer that came to New</p> <p>20 York for some court proceeding and there</p> <p>21 was the press conference and I at least</p> <p>22 had some contact with.</p> <p>23 Q. The Procurador?</p> <p>24 A. Yes, it was either that</p> <p>25 individual or his predecessor or</p>	<p style="text-align: right;">316</p> <p>1 J. KOHN</p> <p>2 Q. In filing the complaint in 2003</p> <p>3 in Ecuador was not naming PetroEcuador or</p> <p>4 the Republic of Ecuador as defendants</p> <p>5 consistent with and pursuant to your</p> <p>6 agreement not to sue them as set forth in</p> <p>7 Exhibit 2222?</p> <p>8 MR. GOMEZ: Same objection.</p> <p>9 A. I don't have a recollection of</p> <p>10 this agreement being discussed or</p> <p>11 considered with respect to which</p> <p>12 defendants would be named in the 2003</p> <p>13 case.</p> <p>14 The fact of not naming the</p> <p>15 Republic of Ecuador and PetroEcuador was</p> <p>16 consistent with a litigation strategy that</p> <p>17 had been extant since 1973 and the other</p> <p>18 issues which I spoke --</p> <p>19 MS. HAMILL: 1993?</p> <p>20 THE WITNESS: I'm sorry, 1993,</p> <p>21 that you can proceed against tortfeasors,</p> <p>22 the ones you choose to, and the plaintiffs</p> <p>23 had chosen not to name the Republic of</p> <p>24 Ecuador or PetroEcuador in the New York</p> <p>25 action and chose not to in the 2003</p>
<p style="text-align: right;">315</p> <p>1 J. KOHN</p> <p>2 successor, someone in that time frame.</p> <p>3 Q. Now, when the action was filed</p> <p>4 in 2003 against Chevron, neither</p> <p>5 PetroEcuador nor the Republic of Ecuador</p> <p>6 were named in that action, correct?</p> <p>7 A. Correct.</p> <p>8 Q. And the agreement not to sue</p> <p>9 the Republic or PetroEcuador or hold them</p> <p>10 liable for the contamination, did you</p> <p>11 understand that agreement to apply to the</p> <p>12 lawsuit that was filed in 2003?</p> <p>13 MR. GOMEZ: Objection,</p> <p>14 privileged.</p> <p>15 MS. NEUMAN: It is an agreement</p> <p>16 with a third party, your Honor.</p> <p>17 THE SPECIAL MASTER: Just a</p> <p>18 second. Please, do not argue and not in</p> <p>19 front of the witness. I want to think</p> <p>20 about it a second. I think you can</p> <p>21 rephrase it to make sure it is not</p> <p>22 privileged.</p> <p>23 Was that conduct pursuant to</p> <p>24 this agreement, if you put it that way, it</p> <p>25 avoids any objection.</p>	<p style="text-align: right;">317</p> <p>1 J. KOHN</p> <p>2 action. I don't remember this coming up</p> <p>3 again or discussing it or if there had</p> <p>4 been an action against the Republic or</p> <p>5 PetroEcuador at that point it would have</p> <p>6 been viewed as a breach of this agreement.</p> <p>7 I don't remember discussing</p> <p>8 those issues or focusing on them. The</p> <p>9 plaintiffs had no intention of suing the</p> <p>10 Republic of Ecuador or PetroEcuador either</p> <p>11 in the U.S. from the beginning of the case</p> <p>12 or in Ecuador.</p> <p>13 Q. You knew in representing the</p> <p>14 plaintiffs in 2003 that PetroEcuador had</p> <p>15 been the majority owner of the consortium</p> <p>16 whose activities were at issue?</p> <p>17 MR. GOMEZ: Objection,</p> <p>18 privileged.</p> <p>19 A. I would have to, you know,</p> <p>20 refresh my recollection --</p> <p>21 MS. HAMILL: Hang on a second.</p> <p>22 THE SPECIAL MASTER: Just a</p> <p>23 second. That was a matter of public</p> <p>24 knowledge. He did not acquire that</p> <p>25 knowledge in confidence. Go ahead.</p>

80 (Pages 314 to 317)

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<p style="text-align: right;">318</p> <p>1 J. KOHN</p> <p>2 MR. GOMEZ: Excuse me, we don't</p> <p>3 know how he acquired that knowledge.</p> <p>4 THE SPECIAL MASTER: If it is a</p> <p>5 matter of public knowledge, it is presumed</p> <p>6 he knew it. It is not -- it is not a</p> <p>7 confidential fact or one he got in</p> <p>8 confidence. If it were a known public</p> <p>9 fact that PetroEcuador was the majority</p> <p>10 owner, as undoubtedly was the case in</p> <p>11 Ecuador, as in the United States, it is</p> <p>12 not privileged.</p> <p>13 A. Again, as I sit here today, I'm</p> <p>14 not clear on all the percentages over the</p> <p>15 long period of time of the consortium.</p> <p>16 Certainly I understood by 2003 that</p> <p>17 Texaco, Chevron, were no longer doing</p> <p>18 business or operating in Ecuador. I</p> <p>19 understood that yes, PetroEcuador was, or</p> <p>20 was operating it with other partners or on</p> <p>21 its own these fields. I understood that.</p> <p>22 But, again, I don't have all</p> <p>23 the different percentages on the top of my</p> <p>24 head from those early agreements.</p> <p>25 Q. Have you ever met someone who</p>	<p style="text-align: right;">320</p> <p>1 J. KOHN</p> <p>2 remember, of participating in a strategy</p> <p>3 session where that was put forward. I do</p> <p>4 recall there were press releases. There</p> <p>5 were attacks and there was this whole</p> <p>6 history of the criminal proceeding which I</p> <p>7 received some e-mails about over the</p> <p>8 course of time.</p> <p>9 THE SPECIAL MASTER: That's not</p> <p>10 privileged. Unseal it. Let Ms. Neuman</p> <p>11 hear the answer.</p> <p>12 (Ms. Neuman, Mr. Stavers and</p> <p>13 Mr. Martin return to the room.)</p> <p>14 THE SPECIAL MASTER: Ms. Neuman,</p> <p>15 you can look on the screen and see the</p> <p>16 answer. I have ruled that it is not</p> <p>17 privileged.</p> <p>18 MS. NEUMAN: Thank you, your</p> <p>19 Honor.</p> <p>20 THE SPECIAL MASTER: Not that</p> <p>21 it is crime-fraud or anything, just that</p> <p>22 it is not privileged.</p> <p>23 MS. NEUMAN: Let me hand the</p> <p>24 witness a document previously marked as</p> <p>25 Exhibit 2239.</p>
<p style="text-align: right;">319</p> <p>1 J. KOHN</p> <p>2 worked for Texaco and now Chevron by the</p> <p>3 name of Ricardo Reis Veiga?</p> <p>4 A. Yes.</p> <p>5 Q. On how many occasions did you</p> <p>6 meet Mr. Veiga?</p> <p>7 A. Probably somewhere between</p> <p>8 three and six.</p> <p>9 Q. Was it part of the plaintiffs'</p> <p>10 strategy in the Ecuador-related litigation</p> <p>11 to attack Mr. Veiga personally?</p> <p>12 MR. GOMEZ: Objection,</p> <p>13 privileged.</p> <p>14 THE SPECIAL MASTER: Let me</p> <p>15 hear the answer in camera first and then I</p> <p>16 will decide. Ms. Neuman, leave the room,</p> <p>17 please. And this part will be sealed,</p> <p>18 this answer will be sealed, at least</p> <p>19 temporarily.</p> <p>20 (Ms. Neuman, Mr. Stavers and</p> <p>21 Mr. Martin depart the room.)</p> <p>22 THE WITNESS: Could the</p> <p>23 reporter read the question.</p> <p>24 (The record was read.)</p> <p>25 A. I wasn't aware, as far as I</p>	<p style="text-align: right;">321</p> <p>1 J. KOHN</p> <p>2 THE SPECIAL MASTER: Do you</p> <p>3 want an explanation of that, Mr. Gomez? I</p> <p>4 will send her out of the room again.</p> <p>5 MR. GOMEZ: No.</p> <p>6 MS. NEUMAN: Which is a March</p> <p>7 3rd, 2005 e-mail from Cristobal Bonifaz to</p> <p>8 Joe Kohn, Steven Donziger, JC Bonifaz,</p> <p>9 Alberto Wray and Monica Pareja, CC Lela</p> <p>10 Salazar, bearing the Bates numbers</p> <p>11 DONZ-HDD-0046401.</p> <p>12 BY MS. NEUMAN:</p> <p>13 Q. I'm going to direct your</p> <p>14 attention, Mr. Kohn, to the last paragraph</p> <p>15 of Mr. Bonifaz's e-mail where he states --</p> <p>16 THE SPECIAL MASTER: Excuse me,</p> <p>17 I haven't finished reading this and I'm</p> <p>18 wondering whether the attachment is a part</p> <p>19 of the document you have marked. Does</p> <p>20 that attachment belong with that document?</p> <p>21 MR. GOMEZ: Let the record</p> <p>22 reflect that pages 2 and 3 of this exhibit</p> <p>23 do not possess a Bates number.</p> <p>24 THE SPECIAL MASTER: Yes,</p> <p>25 that's why I asked. They also have</p>

81 (Pages 318 to 321)

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<p style="text-align: right;">322</p> <p>1 J. KOHN</p> <p>2 dramatically different dates.</p> <p>3 MS. NEUMAN: The January 23rd,</p> <p>4 2011 letter to Mr. Edelman from Cristobal</p> <p>5 Bonifaz, we will have someone check the</p> <p>6 original exhibit to see if they are</p> <p>7 attached to the original exhibit.</p> <p>8 THE SPECIAL MASTER: Whether</p> <p>9 they are attached to the original exhibit</p> <p>10 or not, in what proceeding was this</p> <p>11 exhibit made an exhibit?</p> <p>12 MS. NEUMAN: It would have been</p> <p>13 marked in the 1782 proceedings.</p> <p>14 THE SPECIAL MASTER: In which</p> <p>15 one, the Bonifaz 1782?</p> <p>16 MS. NEUMAN: Bonifaz or</p> <p>17 Donziger.</p> <p>18 THE SPECIAL MASTER: Just one</p> <p>19 second.</p> <p>20 MR. STAVERS: Exhibit 2239</p> <p>21 comes from the deposition of Cristobal</p> <p>22 Bonifaz on March 1st, 2011.</p> <p>23 THE SPECIAL MASTER: And I'm</p> <p>24 not sure I understand, the attachment is a</p> <p>25 letter from Mr. Bonifaz to Mr. Edelman at</p>	<p style="text-align: right;">324</p> <p>1 J. KOHN</p> <p>2 the last two?</p> <p>3 MS. NEUMAN: That's fine with</p> <p>4 me.</p> <p>5 THE SPECIAL MASTER: That's</p> <p>6 fine. Let's go. There has been no</p> <p>7 objection. Let's go. Ask away.</p> <p>8 Q. Mr. Kohn, did you receive</p> <p>9 Exhibit 2239 from Mr. Bonifaz on or about</p> <p>10 March 3rd of 2005?</p> <p>11 A. I don't have a recollection of</p> <p>12 this document. I see I'm up here, e-mail,</p> <p>13 although it is kind of an older version of</p> <p>14 e-mail. It doesn't show the e-mail</p> <p>15 address that things do now. I don't</p> <p>16 recall this particular document.</p> <p>17 If you are representing that it</p> <p>18 was from Mr. Bonifaz's file and he didn't</p> <p>19 get a document coming back saying you</p> <p>20 can't hit that addressee, then I suppose I</p> <p>21 did receive it.</p> <p>22 Q. And at this point in time,</p> <p>23 March 3rd of 2005, both you and</p> <p>24 Mr. Bonifaz are counsel for the Lago Agrio</p> <p>25 plaintiffs?</p>
<p style="text-align: right;">323</p> <p>1 J. KOHN</p> <p>2 Gibson Dunn stating that something or</p> <p>3 other represents a complete and total</p> <p>4 waiver of any possible privileges of the</p> <p>5 Lago Agrio plaintiffs.</p> <p>6 MS. NEUMAN: I don't know why</p> <p>7 the letter is appended, but I only</p> <p>8 intended to question Mr. Kohn on the</p> <p>9 e-mail.</p> <p>10 THE SPECIAL MASTER: I</p> <p>11 understand. Go ahead.</p> <p>12 MR. STAVERS: I just checked</p> <p>13 the transcript of the Bonifaz deposition</p> <p>14 in which this was introduced. There is no</p> <p>15 discussion of the other two pages.</p> <p>16 My speculation is in the</p> <p>17 processing of those exhibits for that</p> <p>18 deposition that was inadvertently appended</p> <p>19 because that was probably produced at some</p> <p>20 other point, but I don't know.</p> <p>21 THE SPECIAL MASTER: All right.</p> <p>22 There has been no objection to this, has</p> <p>23 there, or has there?</p> <p>24 MR. GOMEZ: Well, can we</p> <p>25 stipulate to separate the first page from</p>	<p style="text-align: right;">325</p> <p>1 J. KOHN</p> <p>2 A. Yes.</p> <p>3 Q. In the last paragraph,</p> <p>4 Mr. Bonifaz states "Reis Veiga has too</p> <p>5 much personal stake in this case to turn</p> <p>6 around. He will never do it as it will</p> <p>7 destroy him. Thus, we have to destroy his</p> <p>8 reputation with Chevron Texaco as an</p> <p>9 incompetent any way we can to get our case</p> <p>10 settled."</p> <p>11 Do you see that?</p> <p>12 A. Yes, I do.</p> <p>13 Q. Do you recall Mr. Bonifaz</p> <p>14 expressing the need to attack Mr. Reis</p> <p>15 Veiga personally in this way?</p> <p>16 MR. GOMEZ: Objection,</p> <p>17 privileged.</p> <p>18 THE SPECIAL MASTER: The first</p> <p>19 question is do you recall. If he doesn't</p> <p>20 recall, there is no issue here.</p> <p>21 THE WITNESS: My answer to that</p> <p>22 question would be I do not recall</p> <p>23 Mr. Bonifaz saying those things or using</p> <p>24 that kind of language.</p> <p>25 THE SPECIAL MASTER: Okay,</p>

82 (Pages 322 to 325)

<p style="text-align: right;">326</p> <p>1 J. KOHN</p> <p>2 there is no issue here. Objection</p> <p>3 overruled.</p> <p>4 Q. You are aware, Mr. Kohn, that</p> <p>5 criminal charges were ultimately brought</p> <p>6 by an Ecuadorian prosecutor against</p> <p>7 Mr. Reis Veiga?</p> <p>8 A. I'm aware of that general issue</p> <p>9 and, yes, that they were brought, they</p> <p>10 were dismissed, they were reinstated. I</p> <p>11 remember there was some back and forth on</p> <p>12 it. But I do remember that general topic.</p> <p>13 Q. Did you have any discussions</p> <p>14 with Mr. Donziger about arranging the</p> <p>15 plaintiffs' team working with the ROE to</p> <p>16 have criminal charges brought against</p> <p>17 Mr. Reis Veiga?</p> <p>18 MR. GOMEZ: Objection,</p> <p>19 privileged.</p> <p>20 THE SPECIAL MASTER: That's not</p> <p>21 at all clear, Mr. Gomez. Let's get the</p> <p>22 witness out of the room.</p> <p>23 Before we get the witness out</p> <p>24 of the room, Mr. Kohn, have you ever seen</p> <p>25 a film clip of a Crude outtake of a</p>	<p style="text-align: right;">328</p> <p>1 J. KOHN</p> <p>2 bring about a criminal prosecution of</p> <p>3 Mr. Reis Veiga and then perhaps seeing to</p> <p>4 its dismissal when it no longer served</p> <p>5 their purposes.</p> <p>6 That would be the context or</p> <p>7 the charge that would be brought if one</p> <p>8 were to take the position that's a crime</p> <p>9 or fraud. And I have not done that. I</p> <p>10 have not thought about it sufficiently. I</p> <p>11 would have to go back and look at the clip</p> <p>12 again. I would have to look at the</p> <p>13 transcript again. It would take me some</p> <p>14 time to make that ruling one way or</p> <p>15 another. I don't think we have enough</p> <p>16 time for me to do that this afternoon and</p> <p>17 I don't particularly want to call Mr. Kohn</p> <p>18 back.</p> <p>19 So the question is whether we</p> <p>20 can have some sealed portion of the</p> <p>21 transcript, it can probably be avoided,</p> <p>22 depending on what the witness has to say.</p> <p>23 But if a privilege objection is raised and</p> <p>24 continued, I have no choice but to do</p> <p>25 something like that at some point. It is</p>
<p style="text-align: right;">327</p> <p>1 J. KOHN</p> <p>2 discussion in the office of the Attorney</p> <p>3 General of Ecuador that was attended by</p> <p>4 Mr. Fajardo, among others, dealing with</p> <p>5 the subject of bringing criminal charges</p> <p>6 against Mr. Reis Veiga?</p> <p>7 THE WITNESS: I don't recall</p> <p>8 seeing that outtake. I do not believe I</p> <p>9 have.</p> <p>10 THE SPECIAL MASTER: Okay, why</p> <p>11 don't you leave the room.</p> <p>12 (Witness departs the room.)</p> <p>13 THE SPECIAL MASTER: Mr. Gomez,</p> <p>14 have you ever seen that Crude outtake or a</p> <p>15 transcript of it?</p> <p>16 MR. GOMEZ: I can't recollect</p> <p>17 at this time. I've seen a lot.</p> <p>18 THE SPECIAL MASTER: Well, I</p> <p>19 think there is an issue there that needs</p> <p>20 examination about the crime-fraud</p> <p>21 exception, if you press this point. I</p> <p>22 have not done it. I have not gone into</p> <p>23 it. But it is not self-evident that that</p> <p>24 wasn't a crime or fraud. That is, the</p> <p>25 activities of Mr. Fajardo and others to</p>	<p style="text-align: right;">329</p> <p>1 J. KOHN</p> <p>2 up to you.</p> <p>3 I think the better course is to</p> <p>4 seal -- well, it is going to be sealed</p> <p>5 anyway for the next 21 days, as we know,</p> <p>6 and to just put a pin in it, and if it</p> <p>7 turns out there is no privilege issue,</p> <p>8 nothing happens. If it turns out to be a</p> <p>9 privilege issue, maybe I have to go do</p> <p>10 something about it and maybe we will have</p> <p>11 to call him back. But I suggest we just</p> <p>12 seal it and move on.</p> <p>13 MR. GOMEZ: We will cross this</p> <p>14 bridge later.</p> <p>15 THE SPECIAL MASTER: We may</p> <p>16 have to cross the bridge later, but I</p> <p>17 don't think we need to right this minute.</p> <p>18 MR. GOMEZ: I think that is a</p> <p>19 reasonable proposal.</p> <p>20 THE SPECIAL MASTER: Let's go.</p> <p>21 MS. NEUMAN: How much time do</p> <p>22 we have left?</p> <p>23 THE VIDEOGRAPHER: About 13</p> <p>24 minutes.</p> <p>25 MS. NEUMAN: I meant in the</p>

83 (Pages 326 to 329)

<p style="text-align: right;">330</p> <p>1 J. KOHN</p> <p>2 day, or how much time have we used?</p> <p>3 THE VIDEOGRAPHER: We have gone</p> <p>4 five hours and 54 minutes.</p> <p>5 THE SPECIAL MASTER: So we have</p> <p>6 about an hour, and this time is coming off</p> <p>7 because the witness is out of the room.</p> <p>8 So let's bring the witness back. Let's</p> <p>9 see what is going to go on.</p> <p>10 We will seal this portion of</p> <p>11 the transcript until further notice, not</p> <p>12 just the 21 days that it remains</p> <p>13 confidential.</p> <p>14 MS. NEUMAN: Well, we need to</p> <p>15 change the tape. I would rather change it</p> <p>16 now than in 12 minutes.</p> <p>17 THE SPECIAL MASTER: That's</p> <p>18 fine. Let's do that.</p> <p>19 THE VIDEOGRAPHER: We are going</p> <p>20 off the record. The time is 4:45 p.m.</p> <p>21 (Recess taken.)</p> <p>22 THE VIDEOGRAPHER: We are back</p> <p>23 on the record. The time is 4:50 p.m.</p> <p>24 This is the beginning of disk five.</p> <p>25 MS. NEUMAN: May I have the</p>	<p style="text-align: right;">332</p> <p>1 J. KOHN</p> <p>2 performed under that contract, and I</p> <p>3 remember that spanning some period of</p> <p>4 time, and I believe that the charges that</p> <p>5 ultimately were brought against Mr. Veiga</p> <p>6 related to that in some way is my</p> <p>7 recollection.</p> <p>8 Q. Do you recall having any</p> <p>9 conversations with Mr. Donziger about the</p> <p>10 plaintiffs, the Ecuadorian plaintiffs</p> <p>11 having the ability to make those charges</p> <p>12 go away, the charges that had been brought</p> <p>13 against Mr. Veiga, the criminal charges?</p> <p>14 A. I don't recall a discussion</p> <p>15 about making charges go away once any</p> <p>16 criminal charges were actually brought.</p> <p>17 Q. Did you have any discussions</p> <p>18 with Mr. Donziger about the ability to</p> <p>19 make criminal charges go away before they</p> <p>20 were brought?</p> <p>21 A. I recall a meeting at our</p> <p>22 office which was part of either the Crude</p> <p>23 film or the outtakes where a piece of</p> <p>24 paper was shown to me by Mr. Donziger that</p> <p>25 purports to be some sort of complaint or</p>
<p style="text-align: right;">331</p> <p>1 J. KOHN</p> <p>2 pending question read back to the witness.</p> <p>3 MR. GOMEZ: And I just wanted</p> <p>4 to clarify there is going to be a standing</p> <p>5 objection, as we have discussed, to this</p> <p>6 part.</p> <p>7 THE SPECIAL MASTER: That is</p> <p>8 fine. And it will be part of the same</p> <p>9 sealing process. Should we call it that,</p> <p>10 Mr. Gomez?</p> <p>11 MR. GOMEZ: Yes, that way it</p> <p>12 will just run smoother.</p> <p>13 (The record was read.)</p> <p>14 A. I do not recall any</p> <p>15 discussions.</p> <p>16 Q. Did you have any discussions --</p> <p>17 you became aware when criminal charges</p> <p>18 were brought against Mr. Veiga in Ecuador?</p> <p>19 A. I remember the general issue of</p> <p>20 complaints by the plaintiffs relative to</p> <p>21 the remediation agreement that was entered</p> <p>22 into between Texaco and the government and</p> <p>23 whether that agreement was complied with</p> <p>24 or whether there had been a fraud in</p> <p>25 connection with the work that was</p>	<p style="text-align: right;">333</p> <p>1 J. KOHN</p> <p>2 report by plaintiffs' legal team relative</p> <p>3 to this broader issue of the propriety or</p> <p>4 any fraud in connection with the</p> <p>5 remediation that was performed under that</p> <p>6 contract, and I remember that I asked is</p> <p>7 this something that the plaintiffs could</p> <p>8 facilitate going away if requested.</p> <p>9 What I was referring to was</p> <p>10 this report or this complaint or this</p> <p>11 filing which at that point was a cover</p> <p>12 letter from some office in Ecuador, I</p> <p>13 don't even know if it was the Procurador</p> <p>14 or some other legal office, addressed to</p> <p>15 the United States Attorney General stating</p> <p>16 I've received this report from people in</p> <p>17 Ecuador, would you look into this.</p> <p>18 So at that point I didn't</p> <p>19 believe there was any criminal case.</p> <p>20 There was simply a request for somebody to</p> <p>21 look into something. The reason I asked</p> <p>22 the question the way I did was I was</p> <p>23 unclear when I saw this piece of paper</p> <p>24 presented to me who were these plaintiffs</p> <p>25 or the Ecuadorians who were making this</p>

84 (Pages 330 to 333)

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<p style="text-align: right;">334</p> <p>1 J. KOHN</p> <p>2 complaint, was this someone who was part</p> <p>3 of the case that we had brought in 2003,</p> <p>4 was it a Judith Kimerling related group,</p> <p>5 was it -- there were these independent</p> <p>6 environmental groups, Accion Ecologica,</p> <p>7 some such group, was it something that</p> <p>8 they were putting out.</p> <p>9 So that was the nature. But I</p> <p>10 did not think at that point there was any</p> <p>11 criminal charges. As I understand, there</p> <p>12 wasn't anything until many years later and</p> <p>13 I don't even know if it came through that</p> <p>14 office or some other office, what have</p> <p>15 you.</p> <p>16 Q. In that same conversation with</p> <p>17 Mr. Donziger in your office, do you recall</p> <p>18 him saying that for a couple of years</p> <p>19 we've been trying to get the Attorney</p> <p>20 General to do something about this?</p> <p>21 A. I remember the general -- I</p> <p>22 don't remember those words. I remember</p> <p>23 the notion that this has been something</p> <p>24 that has been going on for a long time in</p> <p>25 Ecuador, even as the prior exhibit</p>	<p style="text-align: right;">336</p> <p>1 J. KOHN</p> <p>2 action.</p> <p>3 But there was this remediation</p> <p>4 agreement and release. If that is</p> <p>5 invalidated because it was induced by</p> <p>6 fraud or wasn't fulfilled or the contract</p> <p>7 wasn't, how would you say it, executed or</p> <p>8 performed, then that defense could go</p> <p>9 away.</p> <p>10 I didn't zero in that it was</p> <p>11 Mr. Veiga per se.</p> <p>12 Q. You indicated, as I understand,</p> <p>13 in one of your prior answers, that what</p> <p>14 you thought you were saying the plaintiffs</p> <p>15 could facilitate going away was not any</p> <p>16 charges that were brought, but, rather,</p> <p>17 the investigation itself; is that right?</p> <p>18 A. No. What I was referring to</p> <p>19 was the document that was represented to</p> <p>20 be some kind of plaintiff document. It</p> <p>21 had the look of like a college term paper.</p> <p>22 It didn't look like a legal lawsuit with</p> <p>23 numbered paragraphs. And it had some sort</p> <p>24 of indication that it was a complaint or a</p> <p>25 report.</p>
<p style="text-align: right;">335</p> <p>1 J. KOHN</p> <p>2 indicates during the period of time that</p> <p>3 Mr. Bonifaz was more involved in the case.</p> <p>4 Q. Were you aware that</p> <p>5 Mr. Donziger was working to try and get</p> <p>6 criminal charges brought in Ecuador</p> <p>7 against Mr. Reis Veiga?</p> <p>8 A. I did not understand it to be</p> <p>9 narrowly focused on Mr. Veiga. I</p> <p>10 understood it to be with respect to the</p> <p>11 overall issue of the remediation and</p> <p>12 release agreement and the effectiveness of</p> <p>13 that.</p> <p>14 In my mind, it might have</p> <p>15 included more individuals than Mr. Veiga.</p> <p>16 It might have included some corporate</p> <p>17 entity. It might have included government</p> <p>18 people or people who worked for the</p> <p>19 government of Ecuador that the claim from</p> <p>20 our perspective was if that release and</p> <p>21 agreement were found some way to be</p> <p>22 invalid, then it could no longer be</p> <p>23 invoked as a defense by Chevron, and</p> <p>24 Chevron was invoking it as an overarching</p> <p>25 or overriding defense to the entire</p>	<p style="text-align: right;">337</p> <p>1 J. KOHN</p> <p>2 At that point it was clear from</p> <p>3 reading the cover letter there were no</p> <p>4 criminal charges and there was some</p> <p>5 request to the Attorney General of the</p> <p>6 United States in the Bush administration</p> <p>7 to start some, and just by glancing at</p> <p>8 that piece of paper for the first time I</p> <p>9 didn't think that was going to happen.</p> <p>10 So also in terms of the timing,</p> <p>11 as I remember, you know, going back to the</p> <p>12 record, this meeting was a couple of weeks</p> <p>13 before a scheduled meeting with Mr. Cullen</p> <p>14 at the Jones Day firm for the express</p> <p>15 purpose of trying to see if there was a</p> <p>16 start to a settlement process, which,</p> <p>17 again, was where my head was after these</p> <p>18 many years. It seemed to be some glimmer</p> <p>19 of some interest at least in having that</p> <p>20 kind of discussion, albeit at an initial</p> <p>21 lawyer to lawyer phase, and my thought was</p> <p>22 the first thing that is going to be on the</p> <p>23 table from a defendant is everything has</p> <p>24 got to be resolved. We are not going to</p> <p>25 settle piecemeal. We are not going to</p>

85 (Pages 334 to 337)

<p style="text-align: right;">338</p> <p>1 J. KOHN</p> <p>2 have other cases. We are not going to</p> <p>3 have a Kimerling group suing us. We are</p> <p>4 not going to have this report that you</p> <p>5 sent to the Procurador or whomever, you</p> <p>6 know, to be pressed or pursued by</p> <p>7 plaintiffs if we are settling with you.</p> <p>8 We are going to want complete peace.</p> <p>9 So that is what was in my head</p> <p>10 at the time.</p> <p>11 MS. NEUMAN: I'm going to give</p> <p>12 the witness a transcript from Crude</p> <p>13 outclip, clip CRS 17000 clip 00, which I'm</p> <p>14 going to mark as Exhibit 4009.</p> <p>15 (Plaintiff's Exhibit 4009</p> <p>16 marked for identification.)</p> <p>17 (Witness perusing document.)</p> <p>18 A. Okay.</p> <p>19 Q. Do you see at the beginning of</p> <p>20 the clip, Mr. Kohn, where Mr. Donziger</p> <p>21 says -- and he is speaking to you,</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 THE SPECIAL MASTER: Is this</p> <p>25 the clip you were talking about that you</p>	<p style="text-align: right;">340</p> <p>1 J. KOHN</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. So you understood during this</p> <p>5 conversation that this report had already</p> <p>6 been given to the Department of Justice by</p> <p>7 the Attorney General of Ecuador, correct?</p> <p>8 MR. GOMEZ: Objection,</p> <p>9 privileged.</p> <p>10 THE SPECIAL MASTER: No, no,</p> <p>11 no, no. This is a description of -- he is</p> <p>12 really describing what was going on in the</p> <p>13 film clip and what his understanding was</p> <p>14 of what that film clip shows. No, go</p> <p>15 ahead.</p> <p>16 MR. GOMEZ: Well, that calls</p> <p>17 for speculation.</p> <p>18 THE SPECIAL MASTER: No, it</p> <p>19 doesn't. He is in the film clip,</p> <p>20 Mr. Gomez.</p> <p>21 MR. GOMEZ: I understand he is</p> <p>22 in the film clip. But she is asking him</p> <p>23 about his understanding of --</p> <p>24 THE SPECIAL MASTER: Yes, and</p> <p>25 his understanding is not a matter of</p>
<p style="text-align: right;">339</p> <p>1 J. KOHN</p> <p>2 saw in the film or in the outtakes?</p> <p>3 THE WITNESS: Yes, and this is</p> <p>4 I believe the same one I was referring to</p> <p>5 in the prior -- raised the same one I was</p> <p>6 referring to in the prior answer.</p> <p>7 THE SPECIAL MASTER: By the</p> <p>8 way, this is clearly not privileged in any</p> <p>9 way.</p> <p>10 MR. GOMEZ: So we are going off</p> <p>11 the seal?</p> <p>12 THE SPECIAL MASTER: For this</p> <p>13 and his previous answer are clearly not</p> <p>14 privileged. Okay, let's go.</p> <p>15 Q. Mr. Kohn, do you see at the</p> <p>16 beginning of the clip where Mr. Donziger</p> <p>17 states "You know, this is a -- this is a</p> <p>18 document that we prepared for the Vanity</p> <p>19 Fair reporter and it has this whole, you</p> <p>20 know -- this -- this is what the gov --</p> <p>21 uh, the Attorney General of Ecuador gave</p> <p>22 to the U.S. Department of Justice which is</p> <p>23 about," and then you say "Okay," and he</p> <p>24 says "the fraud. You know, and it is</p> <p>25 really solid."</p>	<p style="text-align: right;">341</p> <p>1 J. KOHN</p> <p>2 speculation. He just testified</p> <p>3 essentially --</p> <p>4 MR. GOMEZ: His understanding</p> <p>5 would be privileged.</p> <p>6 THE SPECIAL MASTER: No, it is</p> <p>7 not. Go ahead.</p> <p>8 A. Yes, I was seeing this material</p> <p>9 for the first time, and just in terms of</p> <p>10 setting the scene from my perspective, I</p> <p>11 had been told by Mr. Donziger that a</p> <p>12 documentary was being made and that folks</p> <p>13 were going to be in our office and the</p> <p>14 camera would be there. I could not</p> <p>15 imagine that they would have much interest</p> <p>16 in filming lawyers around a conference</p> <p>17 table. I thought they would take some</p> <p>18 pictures of this is where a meeting is and</p> <p>19 they would disappear.</p> <p>20 So I'm a little put off at this</p> <p>21 moment that there is a camera staring at</p> <p>22 me. I'm seeing some piece of paper for</p> <p>23 the first time and Mr. Donziger is then</p> <p>24 launching into this explanation.</p> <p>25 So as he is talking, I'm</p>

86 (Pages 338 to 341)

<p style="text-align: right;">342</p> <p>1 J. KOHN</p> <p>2 looking at it. I see, although he I guess</p> <p>3 later says this is -- or maybe before,</p> <p>4 immediately prior to this he says</p> <p>5 something to the effect that the Attorney</p> <p>6 General has taken some action, and I look</p> <p>7 at this and I say, well, this isn't a</p> <p>8 report by the Attorney General, this says</p> <p>9 plaintiffs' report. But I have the camera</p> <p>10 there, so I'm trying not to be accusatory</p> <p>11 or look like I'm cross-examining my</p> <p>12 co-counsel. So what is this?</p> <p>13 And all there is is a letter</p> <p>14 from some officer in Ecuador forwarding it</p> <p>15 to the Attorney General's Office of the</p> <p>16 United States or it might have been</p> <p>17 directed to the Attorney General. So</p> <p>18 that's sort of the initial thing.</p> <p>19 Q. So you knew during the</p> <p>20 conversation that the Attorney General had</p> <p>21 taken a plaintiffs -- the Attorney General</p> <p>22 of Ecuador had taken a report drafted by</p> <p>23 the plaintiffs and sent it to the</p> <p>24 Department of Justice?</p> <p>25 A. Yeah, and it said plaintiffs'</p>	<p style="text-align: right;">344</p> <p>1 J. KOHN</p> <p>2 Q. After Mr. Donziger showed you</p> <p>3 the plaintiffs' report that the Attorney</p> <p>4 General of Ecuador had sent to the</p> <p>5 Department of Justice with the request for</p> <p>6 an investigation, you say "All right," and</p> <p>7 Mr. Donziger says "And then," and then you</p> <p>8 say "So, again, that may be something that</p> <p>9 we could facilitate going away at the</p> <p>10 right time."</p> <p>11 Do you see that?</p> <p>12 A. Yeah. There is an interruption</p> <p>13 in my answer. He says "exactly" and then</p> <p>14 I say "if they wanted it to go away"; the</p> <p>15 "they" meaning Chevron.</p> <p>16 Q. And what you were suggesting we</p> <p>17 could facilitate going away at the right</p> <p>18 time was the investigation, correct?</p> <p>19 A. No. It was this complaint that</p> <p>20 was being lodged by the plaintiffs that</p> <p>21 they are requesting some officer in their</p> <p>22 country to either try to take some action</p> <p>23 on, which apparently he hadn't, he had</p> <p>24 simply handed it off to the U.S., but it</p> <p>25 was the -- it was the complaint, not the</p>
<p style="text-align: right;">343</p> <p>1 J. KOHN</p> <p>2 report on the cover of it and it was not</p> <p>3 hidden.</p> <p>4 Then, again, this sort of goes</p> <p>5 back to some of my earlier answers of</p> <p>6 seeing Crude and seeing sort of the --</p> <p>7 just kind of the falsity in the setup of</p> <p>8 things. He started launching into this</p> <p>9 kind of oh, great, now the Attorney</p> <p>10 General of Ecuador has finally acted on</p> <p>11 this, and I'm seeing this, and this isn't</p> <p>12 action, this is him just getting some</p> <p>13 report and shipping it off to somebody</p> <p>14 else. Then he gets into this, you know,</p> <p>15 we wrote the report for him. No, you</p> <p>16 didn't. It doesn't say it is his report.</p> <p>17 It clearly says on its cover it is the</p> <p>18 plaintiffs' report.</p> <p>19 So kind of, what are you</p> <p>20 talking about? What are you trying to</p> <p>21 make out of this, you know, term paper</p> <p>22 that somebody wrote?</p> <p>23 MR. GOMEZ: Move to strike.</p> <p>24 THE SPECIAL MASTER: No, no, it</p> <p>25 is not being stricken. Go ahead.</p>	<p style="text-align: right;">345</p> <p>1 J. KOHN</p> <p>2 government action, the complaint that was</p> <p>3 the guts of this document, which was on</p> <p>4 its face says some kind of plaintiff legal</p> <p>5 team, and I had again the initial</p> <p>6 uncertainty as to who is this group</p> <p>7 exactly or what is this, who are the</p> <p>8 authors of this, who are asserting this.</p> <p>9 Q. So you were saying that the</p> <p>10 allegations of fraud that were in the</p> <p>11 document that the Attorney General of</p> <p>12 Ecuador sent to the U.S. Department of</p> <p>13 Justice could be made to go away because</p> <p>14 those allegations of fraud originated with</p> <p>15 the plaintiffs?</p> <p>16 A. I'm suggesting --</p> <p>17 MR. GOMEZ: Objection,</p> <p>18 privileged.</p> <p>19 THE SPECIAL MASTER: No, it is</p> <p>20 not.</p> <p>21 A. I'm suggesting that the</p> <p>22 plaintiffs could control the plaintiffs,</p> <p>23 if these were in fact our group of</p> <p>24 plaintiffs, and withdraw whatever</p> <p>25 complaint or materials they had submitted</p>

87 (Pages 342 to 345)

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<p style="text-align: right;">346</p> <p>1 J. KOHN</p> <p>2 and withdraw their request to their</p> <p>3 government representatives to take any</p> <p>4 action upon this.</p> <p>5 I did not believe that anyone</p> <p>6 could stop the U.S. Justice Department if,</p> <p>7 you know, in the one in a million issue</p> <p>8 that the U.S. Justice Department had any</p> <p>9 interest in this, I certainly didn't have</p> <p>10 to ask Mr. Donziger about that, I know, my</p> <p>11 own experience, you know, what happens</p> <p>12 when our government or if Justice starts</p> <p>13 an action or is involved in an action.</p> <p>14 And the Attorney General of Ecuador was</p> <p>15 decidedly not taking any action, all he</p> <p>16 was doing was sending a cover letter.</p> <p>17 So I was very much focused on</p> <p>18 yes, is it something that we as plaintiffs</p> <p>19 are going to withdraw if, you know,</p> <p>20 Chevron is not going to want to settle</p> <p>21 with us and then have to, you know, have</p> <p>22 people pressing, you know, for fraud</p> <p>23 claims in Ecuador.</p> <p>24 Q. On the first -- in the earlier</p> <p>25 part of the clip where we read</p>	<p style="text-align: right;">348</p> <p>1 J. KOHN</p> <p>2 substance of what that clip shows in my</p> <p>3 recollection. Have you seen that clip?</p> <p>4 THE WITNESS: I have not seen</p> <p>5 that.</p> <p>6 THE SPECIAL MASTER: Were you</p> <p>7 aware that Mr. Fajardo had said that to</p> <p>8 the Attorney General of Ecuador?</p> <p>9 THE WITNESS: No, I was not</p> <p>10 aware of the meeting or the conversation.</p> <p>11 THE SPECIAL MASTER: Were you a</p> <p>12 participant in any such action?</p> <p>13 THE WITNESS: No.</p> <p>14 THE SPECIAL MASTER: Okay, we</p> <p>15 don't have to reach, not through this</p> <p>16 witness, the issue. The matter is</p> <p>17 unsealed. Let's go on.</p> <p>18 Q. Mr. Kohn, I'm going to hand you</p> <p>19 a document bearing the Bates number</p> <p>20 KSG00015456, which is a July 25th e-mail</p> <p>21 between yourself and Kjjjwm@aol.com. We</p> <p>22 will mark this document as Exhibit 4010.</p> <p>23 (Plaintiff's Exhibit 4010</p> <p>24 marked for identification.)</p> <p>25 (Witness perusing document.)</p>
<p style="text-align: right;">347</p> <p>1 J. KOHN</p> <p>2 Mr. Donziger says "for a couple of years</p> <p>3 we've been trying to get the Attorney</p> <p>4 General to try to do something like this,"</p> <p>5 before this meeting did you know that</p> <p>6 Mr. Donziger had been working for a couple</p> <p>7 of years trying to get the Attorney</p> <p>8 General of Ecuador to take action?</p> <p>9 MR. GOMEZ: Objection,</p> <p>10 privileged.</p> <p>11 THE SPECIAL MASTER: I'm going</p> <p>12 to make it part of the -- I think I can</p> <p>13 probably cut through all this and solve</p> <p>14 the issue.</p> <p>15 Mr. Kohn, did you see -- I may</p> <p>16 have asked this question -- did you see a</p> <p>17 film clip from the Crude outtakes in which</p> <p>18 Mr. Fajardo says to the Attorney General</p> <p>19 of Ecuador, in words or substance, that it</p> <p>20 is part of the plaintiffs' legal strategy</p> <p>21 to bring criminal charges against</p> <p>22 Mr. Veiga and Pallares in order to put</p> <p>23 pressure on Chevron to settle?</p> <p>24 That's not an exact quote, I</p> <p>25 don't believe, but it is the sum and</p>	<p style="text-align: right;">349</p> <p>1 J. KOHN</p> <p>2 Q. Mr. Kohn, have you seen Exhibit</p> <p>3 4010 before?</p> <p>4 A. Yes.</p> <p>5 Q. Is this an e-mail that you</p> <p>6 received on or about July 25th of 2008?</p> <p>7 A. Yes, I believe it is, yes.</p> <p>8 Q. Who is Kjjjwm?</p> <p>9 A. That is an e-mail address for</p> <p>10 an individual named Patrick McCarthy.</p> <p>11 Q. And who is Mr. McCarthy?</p> <p>12 A. Mr. McCarthy is an old friend</p> <p>13 and acquaintance who has had a varied</p> <p>14 career and currently resides and works in</p> <p>15 the Washington D.C. area.</p> <p>16 Q. What is his profession?</p> <p>17 A. He is sort of a consultant and</p> <p>18 a strategist. He did practice law for a</p> <p>19 period of time. He was a television</p> <p>20 reporter for a period of time. I don't</p> <p>21 believe he does either. He purports to be</p> <p>22 a strategist or an advisor. He will say</p> <p>23 he is not a lobbyist if asked. He is not</p> <p>24 a registered lobbyist. Businessman, he</p> <p>25 has various business opportunities that he</p>

88 (Pages 346 to 349)

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<p style="text-align: right;">350</p> <p>1 J. KOHN</p> <p>2 pursues.</p> <p>3 Q. Was he hired to -- was</p> <p>4 Mr. McCarthy hired to work on the Ecuador</p> <p>5 case?</p> <p>6 A. He was never hired. He would</p> <p>7 volunteer thoughts from time to time.</p> <p>8 There was one meeting, I recall, or lunch</p> <p>9 that I had with him and Mr. Donziger,</p> <p>10 Mr. Woods, Mr. Hillwig, to sort of kick</p> <p>11 around ideas and it never got any further</p> <p>12 than that.</p> <p>13 Q. In the first paragraph of</p> <p>14 Exhibit 4010, Mr. McCarthy says "Joe, I</p> <p>15 estimate that if you tried, you would have</p> <p>16 a better than 50 percent chance of</p> <p>17 enlisting Ecuador President Correa to</p> <p>18 personally join with your plaintiffs in</p> <p>19 filing suit in early September at The</p> <p>20 Hague to have Chevron judged guilty of</p> <p>21 genocide of indigenous people either under</p> <p>22 a reckless negligence or manslaughter</p> <p>23 theory."</p> <p>24 Do you see that?</p> <p>25 A. Yes, I do.</p>	<p style="text-align: right;">352</p> <p>1 J. KOHN</p> <p>2 litigation?</p> <p>3 A. It is possible. I don't recall</p> <p>4 it off the top of my head. My</p> <p>5 recollection at this moment would be no</p> <p>6 but I could be mistaken about that. There</p> <p>7 may have been some contribution.</p> <p>8 Q. Did you have any control over</p> <p>9 or input into any publications put out by</p> <p>10 the Rainforest Action Network that related</p> <p>11 to litigation in any way?</p> <p>12 A. No.</p> <p>13 Q. Do you know whether anyone else</p> <p>14 on the plaintiffs' team did?</p> <p>15 A. I do not know whether anyone</p> <p>16 did. I think my answer would be similar</p> <p>17 to the answers about Amazon Watch, that</p> <p>18 Rainforest Action Network is an</p> <p>19 independent, preexisting organization that</p> <p>20 has a multitude of projects or interests.</p> <p>21 There was a project or I'm</p> <p>22 aware that there was some meetings and</p> <p>23 communications between Donziger,</p> <p>24 Mr. Woods, other environmental groups, to</p> <p>25 see if Rainforest Action Network would be</p>
<p style="text-align: right;">351</p> <p>1 J. KOHN</p> <p>2 Q. Was Mr. McCarthy ever</p> <p>3 authorized to attempt to reach out to the</p> <p>4 Republic of Ecuador President Correa to do</p> <p>5 a joint action?</p> <p>6 A. No, certainly not by me, and I</p> <p>7 don't believe he had any other independent</p> <p>8 contact with anyone else on the plaintiff</p> <p>9 group. The one lunch with Mr. Donziger,</p> <p>10 Mr. Donziger was on his cell phone for 70</p> <p>11 percent of the lunch and didn't have any</p> <p>12 particular interest in even hearing ideas</p> <p>13 that this gentleman might come up with.</p> <p>14 Q. Was any action taken by anyone</p> <p>15 else on Mr. McCarthy's idea to do joint</p> <p>16 litigation with the ROE?</p> <p>17 A. No.</p> <p>18 Q. The Rainforest Action Network,</p> <p>19 are you familiar with that organization,</p> <p>20 Mr. Kohn?</p> <p>21 A. Somewhat yes. Somewhat</p> <p>22 familiar, yes.</p> <p>23 Q. Did Kohn Swift & Graf fund any</p> <p>24 of the Rainforest Action's activities</p> <p>25 while involved with the Ecuador</p>	<p style="text-align: right;">353</p> <p>1 J. KOHN</p> <p>2 more vocal, if there are other things they</p> <p>3 could do with respect to this situation,</p> <p>4 and I'm not sure how far those ever got.</p> <p>5 I think it sort of tailed off around the</p> <p>6 time that we withdrew in '09.</p> <p>7 MS. NEUMAN: I'm going to mark</p> <p>8 as Exhibit 4011 a document entitled</p> <p>9 Agreement to Dispute a Case Against</p> <p>10 Chevron Texaco, Now Chevron, in Ecuador,</p> <p>11 bearing the Bates numbers DONZ00014089</p> <p>12 through 14092. It includes both an</p> <p>13 English and Spanish version of the</p> <p>14 document.</p> <p>15 (Plaintiff's Exhibit 4011</p> <p>16 marked for identification.)</p> <p>17 MS. HAMILL: And the English</p> <p>18 version is a translation that's been done</p> <p>19 in the course of this litigation; is that</p> <p>20 correct?</p> <p>21 MS. NEUMAN: No, I believe it</p> <p>22 is part of the agreement and was produced</p> <p>23 by Mr. Donziger. Because it has separate,</p> <p>24 unique Bates numbers.</p> <p>25 MR. GOMEZ: I'm sorry, what is</p>

89 (Pages 350 to 353)

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<p style="text-align: right;">354</p> <p>1 J. KOHN</p> <p>2 this marked?</p> <p>3 MS. NEUMAN: 4011.</p> <p>4 Q. Is this your signature,</p> <p>5 Mr. Kohn, on the last page of Exhibit</p> <p>6 4011?</p> <p>7 A. Yes.</p> <p>8 Q. And is this a fee agreement</p> <p>9 that you and Mr. Donziger entered into in</p> <p>10 2006 with the FDA, the FEINCE Cofan</p> <p>11 organization and the ONISE Secoya</p> <p>12 organization?</p> <p>13 A. Yes.</p> <p>14 Q. Were you involved in the</p> <p>15 negotiation of this agreement with those</p> <p>16 organizations?</p> <p>17 A. No.</p> <p>18 Q. Who negotiated this agreement?</p> <p>19 A. The original operative terms</p> <p>20 were negotiated by Mr. Bonifaz with these</p> <p>21 individuals, and there is a predecessor</p> <p>22 document to this at the time of the action</p> <p>23 being filed in 2003.</p> <p>24 This document, which was simply</p> <p>25 with these plaintiff organizations, our</p>	<p style="text-align: right;">356</p> <p>1 J. KOHN</p> <p>2 A. Yes.</p> <p>3 Q. Were those provisions in the</p> <p>4 original agreement that you would get</p> <p>5 between 10 and 25 percent, as you, the</p> <p>6 lawyers, decided?</p> <p>7 A. Yes. There may have been a</p> <p>8 word or two, but the concept was certainly</p> <p>9 in the original agreement. That range and</p> <p>10 the notion that the lawyers would make</p> <p>11 that determination based on the history of</p> <p>12 the case or how it unfolded.</p> <p>13 Q. So the only change between the</p> <p>14 original agreement and Exhibit 4011 was</p> <p>15 the fact that Mr. Donziger was included,</p> <p>16 in addition to yourself and Mr. Bonifaz,</p> <p>17 as one of the attorneys entitled to the</p> <p>18 percentage fee?</p> <p>19 A. That was certainly the reason</p> <p>20 for the new document, as I understand it.</p> <p>21 It is the principal addition. There may</p> <p>22 be some other more stylistic or less</p> <p>23 substantive additions to the document.</p> <p>24 Q. And was Mr. Donziger not</p> <p>25 included in the prior agreement at all?</p>
<p style="text-align: right;">355</p> <p>1 J. KOHN</p> <p>2 law firm and Mr. Bonifaz's law firm, this</p> <p>3 document is essentially the same as the</p> <p>4 earlier one, but it adds Mr. Donziger as a</p> <p>5 separate retained lawyer or firm.</p> <p>6 Q. And was that --</p> <p>7 A. So, again, I would say</p> <p>8 Mr. Bonifaz negotiated the original one.</p> <p>9 Mr. Donziger was involved in the</p> <p>10 preparation and request to the plaintiffs</p> <p>11 to enter a new agreement that had him</p> <p>12 listed as a separate lawyer or law firm</p> <p>13 separate from Bonifaz.</p> <p>14 Q. And in this agreement, at</p> <p>15 paragraph 3, it provides that the legal</p> <p>16 fees, "the percentage will range between</p> <p>17 10 and 25 percent of the monetary value</p> <p>18 obtained as a result of the litigation or</p> <p>19 a settlement. The exact percentage to be</p> <p>20 paid to the attorneys will be determined</p> <p>21 by them on the basis of the nature of</p> <p>22 their efforts and in relationship with the</p> <p>23 monetary amount obtained as a result of</p> <p>24 the litigation or settlement."</p> <p>25 Do you see that?</p>	<p style="text-align: right;">357</p> <p>1 J. KOHN</p> <p>2 A. The original agreement was</p> <p>3 between the plaintiff -- these plaintiff</p> <p>4 organizations, our law firm and</p> <p>5 Mr. Bonifaz's law firm.</p> <p>6 So, again, whether Donziger was</p> <p>7 part of the Bonifaz firm at the time I</p> <p>8 don't really know or have that</p> <p>9 understanding. I thought he was at the</p> <p>10 time and they were working together. Then</p> <p>11 there was this rift and this is at or</p> <p>12 about the time that Mr. Bonifaz's</p> <p>13 representation was coming to an end.</p> <p>14 Q. Mr. Bonifaz's representation of</p> <p>15 the plaintiffs ended in February 2006; is</p> <p>16 that right?</p> <p>17 A. I would have to check that</p> <p>18 date. I know there is -- I believe there</p> <p>19 is a letter from the plaintiff</p> <p>20 organizations terminating Mr. Bonifaz's</p> <p>21 representation. I don't know what the</p> <p>22 date of that was. Again, my recollection</p> <p>23 was there would have been more space</p> <p>24 between this document and that document.</p> <p>25 Q. If you look at the last page of</p>

90 (Pages 354 to 357)

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<p style="text-align: right;">358</p> <p>1 J. KOHN</p> <p>2 the document, Mr. Donziger's signature is</p> <p>3 dated April of 2006.</p> <p>4 A. Yes, I see that.</p> <p>5 Q. Do you know when you signed</p> <p>6 this document?</p> <p>7 A. I do not.</p> <p>8 Q. Is it accurate at this point in</p> <p>9 time, early 2006, Mr. Donziger was able to</p> <p>10 successfully negotiate with the</p> <p>11 plaintiffs' group, adding himself to the</p> <p>12 attorney fee agreement for the Ecuador</p> <p>13 case?</p> <p>14 A. Yes, absolutely.</p> <p>15 Q. And as I understand it, you</p> <p>16 weren't involved in those negotiations; is</p> <p>17 that right?</p> <p>18 A. Correct.</p> <p>19 Q. And do you know whether or not</p> <p>20 Mr. Bonifaz was involved in those</p> <p>21 negotiations?</p> <p>22 A. I do not know one way or the</p> <p>23 other whether he was.</p> <p>24 MS. NEUMAN: I'm going to mark</p> <p>25 as Exhibit 4012 what purports to be the</p>	<p style="text-align: right;">360</p> <p>1 J. KOHN</p> <p>2 He certainly was involved in</p> <p>3 the day to day operation of the</p> <p>4 proceedings in Ecuador and the management</p> <p>5 of that, and there was a rift that</p> <p>6 occurred between the plaintiffs and</p> <p>7 Mr. Bonifaz on the one hand, between the</p> <p>8 plaintiffs and Mr. Donziger on the one</p> <p>9 hand and Mr. Bonifaz on the other hand,</p> <p>10 and I'm not sure whether that was</p> <p>11 occurring before Mr. Donziger was spending</p> <p>12 that time there, whether his participation</p> <p>13 led to it in some way.</p> <p>14 I was not apprised of any</p> <p>15 speculation or gossip about this</p> <p>16 happening. I sort of heard about it as,</p> <p>17 you know, a fait accompli, or sort of the</p> <p>18 rift had occurred, the disillusionment of</p> <p>19 the plaintiffs with Mr. Bonifaz had</p> <p>20 occurred when I heard about it the first</p> <p>21 time.</p> <p>22 Q. Did you know that Mr. Bonifaz</p> <p>23 was going to be fired before he was fired</p> <p>24 or did you not know it until he was fired?</p> <p>25 A. I may have known about it --</p>
<p style="text-align: right;">359</p> <p>1 J. KOHN</p> <p>2 Executive Committee of the Assembly of the</p> <p>3 Victims of Texaco Resolution dated</p> <p>4 February 10th, 2006.</p> <p>5 (Plaintiff's Exhibit 4012</p> <p>6 marked for identification.)</p> <p>7 Q. Is Exhibit 4012, Mr. Kohn, the</p> <p>8 document that you were referring to as</p> <p>9 firing Mr. Bonifaz?</p> <p>10 A. This appears to be an English</p> <p>11 translation of it. I believe there is a</p> <p>12 Spanish original.</p> <p>13 Q. What led to -- let me withdraw</p> <p>14 that.</p> <p>15 Was Mr. Donziger involved in</p> <p>16 having Mr. Bonifaz fired in 2006?</p> <p>17 MR. GOMEZ: Objection, vague,</p> <p>18 and privileged.</p> <p>19 THE SPECIAL MASTER: The</p> <p>20 termination of a lawyer is not a</p> <p>21 privileged matter.</p> <p>22 A. I don't know that he was</p> <p>23 involved in the narrow final decision as</p> <p>24 referenced in this translation of these</p> <p>25 resolutions.</p>	<p style="text-align: right;">361</p> <p>1 J. KOHN</p> <p>2 MR. GOMEZ: Objection,</p> <p>3 privileged.</p> <p>4 THE SPECIAL MASTER: She is</p> <p>5 only asking whether he knew about it.</p> <p>6 There is no privilege here.</p> <p>7 A. I remember receiving a call</p> <p>8 from Mr. Bonifaz and he said he was --</p> <p>9 kind of chuckling when he said it -- he</p> <p>10 said Joe, I got a letter from all the</p> <p>11 plaintiffs firing me.</p> <p>12 So in some sense I didn't know</p> <p>13 that it had reached that level. I believe</p> <p>14 I had some sense that there was some</p> <p>15 disillusionment or that something like</p> <p>16 that could happen if things didn't change</p> <p>17 or if people couldn't get their heads</p> <p>18 together, but I sort of remember that that</p> <p>19 piece struck that that was news when he</p> <p>20 called me and told me that he actually</p> <p>21 received some communication.</p> <p>22 Q. When Mr. Wray transitioned off</p> <p>23 the case, that was also in 2006, correct?</p> <p>24 A. I don't remember him ever,</p> <p>25 quote, transitioning off the case. My</p>

91 (Pages 358 to 361)

<p style="text-align: right;">362</p> <p>1 J. KOHN</p> <p>2 understanding of Mr. Wray's role,</p> <p>3 Dr. Wray's role, was he was very much</p> <p>4 involved in what I call the first phase of</p> <p>5 the trial and he actually made the</p> <p>6 presentations and the legal arguments to</p> <p>7 the court.</p> <p>8 He then was gradually less</p> <p>9 involved as we moved into the inspection</p> <p>10 phase. The attorney from his office,</p> <p>11 Monica, was involved at the beginning of</p> <p>12 that process. I always understood that he</p> <p>13 was still involved in the case, and it was</p> <p>14 represented to us that if there were --</p> <p>15 certainly if there were appellate</p> <p>16 arguments that he would be somebody who</p> <p>17 would participate, if there was going to</p> <p>18 be a final argument in terms of the final</p> <p>19 presentation or the phase three of the</p> <p>20 case, I understood that he would be</p> <p>21 involved with that.</p> <p>22 But he transitioned off the</p> <p>23 active day to day litigating. He was no</p> <p>24 longer going to Lago Agrio for the</p> <p>25 proceedings and inspections, etc.</p>	<p style="text-align: right;">364</p> <p>1 J. KOHN</p> <p>2 he was not going to be involved in the day</p> <p>3 to day, he was not going to go out and do</p> <p>4 the inspections.</p> <p>5 Q. Were you involved in the</p> <p>6 decision to make Mr. Fajardo counsel of</p> <p>7 record for the plaintiffs, their lead</p> <p>8 plaintiff -- their lead lawyer during this</p> <p>9 inspection phase of the case?</p> <p>10 A. No. I was aware of his efforts</p> <p>11 and his work and how he had kind of earned</p> <p>12 and worked and assumed that role. But I</p> <p>13 was not involved in any decision-making to</p> <p>14 make a change or to say he should be in</p> <p>15 that role.</p> <p>16 I was informed of that, I was</p> <p>17 informed, again, through Mr. Donziger of</p> <p>18 periodic developments in the case and the</p> <p>19 progress of the case, and, you know, first</p> <p>20 heard that there was this new, young</p> <p>21 lawyer who was throwing himself into the</p> <p>22 case, Mr. Fajardo, and doing a great job,</p> <p>23 and working hard on it, and bright, and</p> <p>24 all those kinds of things.</p> <p>25 Q. You understood Mr. Fajardo had</p>
<p style="text-align: right;">363</p> <p>1 J. KOHN</p> <p>2 Q. You understood that in Lago</p> <p>3 Agrio, outside of the case, Mr. Wray was</p> <p>4 counsel of record, he was the one with the</p> <p>5 plaintiffs' power of attorney, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Did you also understand that in</p> <p>8 2006 the plaintiffs gave a power of</p> <p>9 attorney -- revoked the one they had given</p> <p>10 to Mr. Wray and gave their power of</p> <p>11 attorney to Mr. Fajardo to appear as</p> <p>12 counsel of record in the case?</p> <p>13 A. I did not know that detail or</p> <p>14 that there was a revocation of Mr. Wray or</p> <p>15 Dr. Wray's representation and I'm not sure</p> <p>16 whether that would have been a formality</p> <p>17 of a lawyer entering an appearance and</p> <p>18 someone else withdrawing an appearance in</p> <p>19 a litigation, but still being involved in</p> <p>20 a case or still having a representation</p> <p>21 under their procedures.</p> <p>22 I never understood that Wray</p> <p>23 had been terminated, fired, out of the</p> <p>24 case the way Bonifaz was; quite the</p> <p>25 contrary, I thought he remained involved,</p>	<p style="text-align: right;">365</p> <p>1 J. KOHN</p> <p>2 graduated from law school in 2004?</p> <p>3 A. I'm not sure I knew that date.</p> <p>4 I knew he was a young lawyer. I didn't</p> <p>5 know that he was that recent of a grad.</p> <p>6 Q. And did there come a time that</p> <p>7 you saw that Mr. Fajardo had taken a lead</p> <p>8 role in Ecuador, had become the face of</p> <p>9 the plaintiffs' case?</p> <p>10 A. I understood that as part of</p> <p>11 the judicial inspection process. I think</p> <p>12 I certainly had some understanding of that</p> <p>13 prior to the Vanity Fair article, and I</p> <p>14 don't recall when that article came out,</p> <p>15 but I knew, you know, of his role some</p> <p>16 period of time before that date, if that</p> <p>17 ties it into a date.</p> <p>18 Q. In your understanding, he had</p> <p>19 no significant litigation experience</p> <p>20 outside of this case?</p> <p>21 A. Right.</p> <p>22 Q. You mentioned earlier when your</p> <p>23 team was trying to work with Mr. Donziger</p> <p>24 to get the materials they needed to draft</p> <p>25 the final submission; do you recall that?</p>

<p style="text-align: right;">366</p> <p>1 J. KOHN</p> <p>2 A. I recall the general topic in</p> <p>3 that time period and it was not just for</p> <p>4 the final submission issue, it was for</p> <p>5 others, so it would just be a little</p> <p>6 broader, but yes, I remember that general</p> <p>7 topic.</p> <p>8 Q. Did Mr. Donziger ever make any</p> <p>9 representations to you about whether in</p> <p>10 Ecuador you could submit proposed</p> <p>11 judgments?</p> <p>12 A. No, I don't recall discussing</p> <p>13 it at that level that you could or could</p> <p>14 not. We were at the rudimentary stage</p> <p>15 before that of trying to understand what</p> <p>16 in fact were the procedures in Ecuador.</p> <p>17 That was item one on the agenda, we had to</p> <p>18 try to meet with the lawyers in Ecuador,</p> <p>19 how does this process work. I was</p> <p>20 curious, you know, what does a judgment</p> <p>21 look like in other cases. What would a</p> <p>22 court order or verdict or resolution of a</p> <p>23 case look like in an automobile accident</p> <p>24 case or some factory explosion.</p> <p>25 I mean, that was the kind of</p>	<p style="text-align: right;">368</p> <p>1 J. KOHN</p> <p>2 other litigation around how you would</p> <p>3 implement that sort of thing. We couldn't</p> <p>4 get to first base on having those kinds of</p> <p>5 discussions.</p> <p>6 (Plaintiff's Exhibit 4013</p> <p>7 marked for identification.)</p> <p>8 MS. NEUMAN: I'm going to hand</p> <p>9 the witness a document that I'm going to</p> <p>10 mark as 4013. It is entitled Selva Viva,</p> <p>11 CIA LTDA Expenses Report, Period:</p> <p>12 December 24th, 2006 through March 23rd,</p> <p>13 2007.</p> <p>14 It bears the Bates numbers</p> <p>15 KSG00125011 --</p> <p>16 MR. GOMEZ: Could we have a</p> <p>17 reading of the time, please?</p> <p>18 MS. NEUMAN: -- through KSG</p> <p>19 001215208.</p> <p>20 THE VIDEOGRAPHER: Six hours</p> <p>21 and 34 minutes so far.</p> <p>22 Q. Mr. Kohn, you testified earlier</p> <p>23 about accountings that you would get</p> <p>24 periodically from the Selva Viva entity to</p> <p>25 account for the monies that Kohn Swift &</p>
<p style="text-align: right;">367</p> <p>1 J. KOHN</p> <p>2 basic questions we wanted to ask. I think</p> <p>3 we did in fact pose them to Donziger, the</p> <p>4 kind of thing we wanted to explore with</p> <p>5 Professor Gidi, etc., what are the</p> <p>6 procedures and how do we comply with them,</p> <p>7 how do we do the best job for the clients</p> <p>8 under those rules.</p> <p>9 Q. Did anyone at Kohn Swift & Graf</p> <p>10 get to the point of drafting a proposed</p> <p>11 judgment or proposed findings of facts and</p> <p>12 conclusions of law, anything like that?</p> <p>13 A. Nope. We couldn't get the sort</p> <p>14 of fundamental questions answered. We had</p> <p>15 some discussion I recall with Donziger and</p> <p>16 Woods. I didn't know whether this is --</p> <p>17 whether it was something that an initial</p> <p>18 decision would be made just with respect</p> <p>19 to liability and there would be a whole</p> <p>20 other phase of damages.</p> <p>21 I didn't know if there would be</p> <p>22 a procedure whereby there just might be a</p> <p>23 total dollar verdict with a subsequent</p> <p>24 kind of remedy phase where you go and</p> <p>25 determine or get other submissions or</p>	<p style="text-align: right;">369</p> <p>1 J. KOHN</p> <p>2 Graf was transferring into their bank</p> <p>3 account. Do you recall that?</p> <p>4 A. Yes, I do.</p> <p>5 Q. Is Exhibit 4013 one of those</p> <p>6 accountings?</p> <p>7 A. Yes, it is.</p> <p>8 Q. And they would be prepared by</p> <p>9 or at least signed by Mr. Yanza as Exhibit</p> <p>10 4013 is signed?</p> <p>11 A. Yes.</p> <p>12 Q. Looking at the categories of</p> <p>13 expenses on the first page of 4013, it</p> <p>14 appears that Kohn Swift & Graf was paying</p> <p>15 essentially all of the expenses of the</p> <p>16 legal team in Ecuador, including their</p> <p>17 rent, their food and lodging, office</p> <p>18 maintenance, office cleaning, office</p> <p>19 supplies. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. And was that your understanding</p> <p>22 when you were funding Selva Viva that you</p> <p>23 were providing them, the legal team down</p> <p>24 there, with office space and compensation</p> <p>25 and everything they needed to operate an</p>

93 (Pages 366 to 369)

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<p style="text-align: right;">370</p> <p>1 J. KOHN</p> <p>2 office?</p> <p>3 A. Yes, that sort of developed</p> <p>4 over the time of the case. Initially,</p> <p>5 again, initially Dr. Wray's office was</p> <p>6 involved. I believe that some of the</p> <p>7 payments to Dr. Wray that you saw in one</p> <p>8 of the earlier exhibits today would have</p> <p>9 been reimbursement for some of those</p> <p>10 litigation-related expenses, the travel to</p> <p>11 Lago, etc.</p> <p>12 Then this began on a more</p> <p>13 sporadic basis of, you know, we need a new</p> <p>14 computer system or we need, you know, X, Y</p> <p>15 or Z. So we were sort of piecemeal making</p> <p>16 those kind of decisions. Then it evolved</p> <p>17 to well, let's have a more</p> <p>18 institutionalized, this is a monthly bill</p> <p>19 or overhead to run the office that is</p> <p>20 working full time on this matter and let's</p> <p>21 set a monthly rate now that may have a</p> <p>22 little bit of leeway or if some emergency</p> <p>23 comes up or you need to buy some new</p> <p>24 equipment or your telephones break that</p> <p>25 you don't have to send something to our</p>	<p style="text-align: right;">372</p> <p>1 J. KOHN</p> <p>2 the process that we began to say, you</p> <p>3 know, that this lag time was beyond now</p> <p>4 just kind of well, it takes us some time</p> <p>5 to pull the records together or we are</p> <p>6 shipping them or that kind of thing.</p> <p>7 So, again, my sense was we</p> <p>8 have -- we did receive reports after 2007.</p> <p>9 It would just be surprising to me it was</p> <p>10 that long a period of time.</p> <p>11 Q. And if you did receive those</p> <p>12 reports and they weren't produced, do you</p> <p>13 know why that would be?</p> <p>14 A. I do not know why that would</p> <p>15 be.</p> <p>16 Q. Now, when you sent Selva Viva</p> <p>17 money, we talked about that they had a</p> <p>18 Banco Pichincha account and Kohn Swift &</p> <p>19 Graf would transfer money to that account,</p> <p>20 do you recall that?</p> <p>21 A. Yes.</p> <p>22 Q. In August of 2007, after</p> <p>23 Cabrera had been appointed, there came a</p> <p>24 time where your assistant, I believe her</p> <p>25 name was Karen Wilson; is that right?</p>
<p style="text-align: right;">371</p> <p>1 J. KOHN</p> <p>2 office and wait to have it done.</p> <p>3 Then these reports would come</p> <p>4 in in kind of a spiral bound, actually in</p> <p>5 their original form appeared to be thicker</p> <p>6 than this, somehow they seem a little more</p> <p>7 thinner paper, more efficiently. I guess</p> <p>8 if some of these were the original</p> <p>9 receipts they would have, you know, text</p> <p>10 or two that you don't have here. Then</p> <p>11 these would come -- they were coming on a</p> <p>12 regular basis. There would be some</p> <p>13 periods where they would lag, they would</p> <p>14 catch up, and then at the end, there was</p> <p>15 that big gap at the end.</p> <p>16 Q. Now, we, in reviewing the</p> <p>17 documents that you made available to us,</p> <p>18 could not find a Selva Viva accounting for</p> <p>19 any time period after September 2007.</p> <p>20 Do you recall receiving Selva</p> <p>21 Viva accountings after September 2007?</p> <p>22 A. As I sit here now, I don't have</p> <p>23 a specific recollection of them coming</p> <p>24 after 2007, but I would say that that also</p> <p>25 surprises me. I thought it was later in</p>	<p style="text-align: right;">373</p> <p>1 J. KOHN</p> <p>2 A. Yes, uh-huh.</p> <p>3 Q. Was asked to transfer money to</p> <p>4 a different account, an account with a</p> <p>5 different number. Do you recall that</p> <p>6 generally?</p> <p>7 A. I recall that generally, yes.</p> <p>8 Q. What explanation were you given</p> <p>9 as to why money needed to go to a second,</p> <p>10 different account in August and September</p> <p>11 of 2007?</p> <p>12 MR. GOMEZ: Objection,</p> <p>13 privileged.</p> <p>14 THE SPECIAL MASTER: First of</p> <p>15 all, I don't think it is privileged. It</p> <p>16 is no more privileged than these invoices,</p> <p>17 than any expense report -- expenses report</p> <p>18 that is on any law firm bill to a client</p> <p>19 and any different from a notation on a law</p> <p>20 firm bill that says please remit to</p> <p>21 account number such and such by wire</p> <p>22 transfer at such and such bank in Des</p> <p>23 Moines, Iowa, unless there is something</p> <p>24 the matter with these transfers.</p> <p>25 So either it is going to be</p>

94 (Pages 370 to 373)

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<p style="text-align: right;">374</p> <p>1 J. KOHN</p> <p>2 entirely unprivileged because it is just</p> <p>3 routine expenses and no more privileged</p> <p>4 than any law firm issuing a bill for</p> <p>5 expenses and disbursements to a client, or</p> <p>6 vice versa, or it is initially privileged</p> <p>7 and subject perhaps to a crime-fraud</p> <p>8 exception, depending on the uses to which</p> <p>9 the money is put.</p> <p>10 So let's start with the easier</p> <p>11 version and see whether or not it can</p> <p>12 be -- the crime-fraud issue can be avoided</p> <p>13 and let's see what the explanation is</p> <p>14 first.</p> <p>15 MS. HAMILL: Do you remember</p> <p>16 the question? Do you want it read back?</p> <p>17 Q. What explanation were you given</p> <p>18 as to why money needed to go to a second,</p> <p>19 different account in August and September</p> <p>20 of 2007?</p> <p>21 A. There was an explanation that</p> <p>22 Donziger provided by e-mail to Ms. Wilson,</p> <p>23 possibly also to Ms. Kenny, the</p> <p>24 bookkeeper, in response to their e-mail</p> <p>25 request which was simply this is a</p>	<p style="text-align: right;">376</p> <p>1 J. KOHN</p> <p>2 It was almost presented in the</p> <p>3 sense of, you know, like our checkbook is</p> <p>4 so screwed up on the first account I have</p> <p>5 got to open up a second account, or I'm</p> <p>6 having some dispute with the bank on the</p> <p>7 one account, or it got better, you know,</p> <p>8 there was some promotion the bank was</p> <p>9 doing and they just opened another</p> <p>10 account. It was just presented as a very</p> <p>11 ministerial issue. And I'm sure you have</p> <p>12 the e-mail back and forth on that.</p> <p>13 Q. We do, the e-mail with</p> <p>14 Mr. Donziger and your assistant.</p> <p>15 At the time of the second</p> <p>16 request, September 12th of 2007,</p> <p>17 Mr. Donziger's expense reports indicate</p> <p>18 that he was meeting with you on that day</p> <p>19 in Philadelphia.</p> <p>20 Do you recall discussing the</p> <p>21 issue with him in person of the second</p> <p>22 account?</p> <p>23 A. No.</p> <p>24 Q. Do you recall any specific</p> <p>25 representations he made to you, whether</p>
<p style="text-align: right;">375</p> <p>1 J. KOHN</p> <p>2 different account number, why is this a</p> <p>3 new account, or they may have been making</p> <p>4 sure do they have the correct information.</p> <p>5 They just know that it was different than</p> <p>6 where the other transfers had gone.</p> <p>7 There was an e-mail response</p> <p>8 from Donziger that essentially stated this</p> <p>9 is just another account that Selva has</p> <p>10 opened and it is otherwise being handled</p> <p>11 in the same manner and Mr. Yanza will</p> <p>12 provide the backup as he has been doing</p> <p>13 for the other account.</p> <p>14 I have some recollection that</p> <p>15 Karen Wilson or Kathy Kenny just kind of</p> <p>16 let me know, did you see this, this is why</p> <p>17 this is a new number, kind of if I had</p> <p>18 asked about it, this is why -- this a new</p> <p>19 account, this is what Steven would have</p> <p>20 referred to them. And I have some vague</p> <p>21 recollection that there might have been a</p> <p>22 phone call with Donziger directly to me at</p> <p>23 or about this time saying did Karen and</p> <p>24 Kathy understand, this is just a new</p> <p>25 account, the same bank.</p>	<p style="text-align: right;">377</p> <p>1 J. KOHN</p> <p>2 they were over the phone or in person,</p> <p>3 regarding the need for the account or</p> <p>4 the -- let me rephrase that.</p> <p>5 You said that you had the</p> <p>6 impression that the opening of the second</p> <p>7 account was ministerial.</p> <p>8 Did you get that impression</p> <p>9 from Mr. Donziger?</p> <p>10 A. I got it certainly from the</p> <p>11 e-mail and then secondly from my</p> <p>12 recollection which was that it was a</p> <p>13 follow-up phone call, it might have been</p> <p>14 in person, I'm pretty sure it was a phone</p> <p>15 call, but I believe it was just kind of do</p> <p>16 Karen and Kathy understand any other</p> <p>17 issues or any other questions about this</p> <p>18 different account number. And that was</p> <p>19 the -- that was the end of it. I didn't</p> <p>20 think about it any further.</p> <p>21 Q. Did Mr. Donziger ever disclose</p> <p>22 to you that the second account was being</p> <p>23 opened to make payments to Mr. Cabrera</p> <p>24 outside the court process?</p> <p>25 A. Certainly not.</p>

95 (Pages 374 to 377)

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<p style="text-align: right;">378</p> <p>1 J. KOHN</p> <p>2 Q. Are you aware that \$33,000 of</p> <p>3 \$50,000 that Kohn Swift & Graf deposited</p> <p>4 in the second account were paid to</p> <p>5 Mr. Cabrera and that those monies were</p> <p>6 never disclosed to the court?</p> <p>7 A. I am not aware of that. I</p> <p>8 understand that that's a claim and a</p> <p>9 charge that is being made, but I certainly</p> <p>10 did not know about it at the time. I did</p> <p>11 not know about it until it was made by</p> <p>12 Chevron in this matter.</p> <p>13 Q. Do you have any understanding</p> <p>14 that Banco Pichincha has now produced the</p> <p>15 records for those accounts and it shows</p> <p>16 the payment to Mr. Cabrera out of the</p> <p>17 second secret account?</p> <p>18 A. I understood that there was</p> <p>19 subpoenas to that bank. I didn't know how</p> <p>20 that ultimately was resolved and I was</p> <p>21 never told that it was a, quote, secret</p> <p>22 account. I was never told to keep it</p> <p>23 secret.</p> <p>24 I was just told, you know, we</p> <p>25 either changed banks or we just got a new</p>	<p style="text-align: right;">380</p> <p>1 J. KOHN</p> <p>2 there was not an honest answer. Then</p> <p>3 there was a reaffirmation by him of the,</p> <p>4 you know, the ministerial type answer.</p> <p>5 So the answer to your question</p> <p>6 is yes.</p> <p>7 MS. NEUMAN: I'm going to give</p> <p>8 the witness a document I'm going to mark</p> <p>9 as Exhibit 4014. It bears the Bates</p> <p>10 numbers KSG00170293 through KSG00170404</p> <p>11 and is entitled Date: 9-23-2010 Pro Forma</p> <p>12 Statement as of 9-20-10, Texaco-Ecuador</p> <p>13 POLLU.</p> <p>14 (Plaintiff's Exhibit 4014</p> <p>15 marked for identification.)</p> <p>16 Q. Mr. Kohn, is Exhibit 4014 a</p> <p>17 document prepared by Kohn Swift & Graf?</p> <p>18 A. Yes, it is.</p> <p>19 Q. And is it a document setting</p> <p>20 forth expenses incurred in connection with</p> <p>21 the Ecuador litigation?</p> <p>22 A. Yes.</p> <p>23 Q. The descriptions that go along</p> <p>24 with the payments, are those descriptions</p> <p>25 taken off the invoices that are provided</p>
<p style="text-align: right;">379</p> <p>1 J. KOHN</p> <p>2 account with the same bank, plus you have</p> <p>3 a savings account and a checking account</p> <p>4 at the same bank or you have an ATM card</p> <p>5 with the bank, but you also have another</p> <p>6 account. It was very much in that vein.</p> <p>7 Q. You testified that Mr. Donziger</p> <p>8 lied to you, and that had he not been</p> <p>9 lying to you, you would have not continued</p> <p>10 paying his fees.</p> <p>11 A. This would be another example,</p> <p>12 yes.</p> <p>13 Q. Did you continue to pay</p> <p>14 Mr. Donziger on the basis of statements</p> <p>15 that you now know to be false?</p> <p>16 MR. GOMEZ: Objection, vague.</p> <p>17 A. We made payments during the</p> <p>18 period after, yes, he was directly asked</p> <p>19 about some of these issues, and in</p> <p>20 hindsight I see did not give truthful</p> <p>21 answers or gave completely false answers.</p> <p>22 We certainly made payments</p> <p>23 after the opening of this second bank</p> <p>24 account, and when asked by albeit</p> <p>25 administrative staff what's the reason,</p>	<p style="text-align: right;">381</p> <p>1 J. KOHN</p> <p>2 to Kohn Swift & Graf?</p> <p>3 A. I believe these descriptions</p> <p>4 are taken off the law firm's internal</p> <p>5 disbursement memorandum which would</p> <p>6 summarize or refer to or attach the</p> <p>7 underlying invoice from the third party.</p> <p>8 So the court reporter sends a</p> <p>9 bill for the transcript, we would have the</p> <p>10 bill from the court reporter, then there</p> <p>11 is an internal little cover page that is</p> <p>12 prepared, it is called a disbursement memo</p> <p>13 that would say please draw a check to the</p> <p>14 court reporter for deposition on this</p> <p>15 date.</p> <p>16 Now, some of those may have</p> <p>17 more detail than others given the person</p> <p>18 who prepares the disbursement memo, some</p> <p>19 being more effusive in their descriptions</p> <p>20 than others.</p> <p>21 Q. And to the extent you've got a</p> <p>22 disbursement to Mr. Donziger and it</p> <p>23 describes what he was doing, is that a</p> <p>24 description that he would provide?</p> <p>25 A. Well, for the most part his</p>

96 (Pages 378 to 381)

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<p style="text-align: right;">382</p> <p>1 J. KOHN</p> <p>2 invoices to us for the time or the fee</p> <p>3 advance did not have much detail. The</p> <p>4 expenses did have detail.</p> <p>5 Q. But if the expenses said</p> <p>6 payment to Steven Donziger for meeting</p> <p>7 with so and so, would he be providing the</p> <p>8 description of meeting with so and so?</p> <p>9 A. Yes.</p> <p>10 Q. And is this document, Exhibit</p> <p>11 4014, a document that is kept in the</p> <p>12 ordinary course of the Kohn Swift & Graf</p> <p>13 firm's operations?</p> <p>14 A. All the information is. The</p> <p>15 documents are not necessarily printed</p> <p>16 unless there is some request or need to do</p> <p>17 so.</p> <p>18 Q. They are normally kept on your</p> <p>19 system?</p> <p>20 A. Kept on the system, and there</p> <p>21 is different ways to organize them by the</p> <p>22 type of expense, which this appears to be,</p> <p>23 as well as chronologically, you will see</p> <p>24 all the postage is listed, all the, what</p> <p>25 have you, but you could just do it I</p>	<p style="text-align: right;">384</p> <p>1 J. KOHN</p> <p>2 in place for a long time, and I don't</p> <p>3 believe there has ever been any question</p> <p>4 about the firm's expense reimbursements in</p> <p>5 cases. They are of public record.</p> <p>6 Q. Have you taken any action</p> <p>7 against Mr. Donziger based on his</p> <p>8 misrepresentations to you and his</p> <p>9 obtaining funds from you under false</p> <p>10 pretenses?</p> <p>11 A. Yes.</p> <p>12 Q. What have you done in that</p> <p>13 regard?</p> <p>14 A. We instituted a legal action in</p> <p>15 the state court in Philadelphia,</p> <p>16 Pennsylvania under a procedure in</p> <p>17 Pennsylvania state practice, and then</p> <p>18 shortly thereafter we entered into a</p> <p>19 tolling and standstill agreement with</p> <p>20 Donziger and his various law firm</p> <p>21 entities, and then I think that, what they</p> <p>22 call a writ of summons is the procedure to</p> <p>23 initiate the action, and then that was</p> <p>24 withdrawn, and at this point the tolling</p> <p>25 agreement is still in place.</p>
<p style="text-align: right;">383</p> <p>1 J. KOHN</p> <p>2 believe chronologically by each expense or</p> <p>3 otherwise.</p> <p>4 Q. And the expense is entered when</p> <p>5 the payment is made or the request for</p> <p>6 payment is made?</p> <p>7 A. Good question. Probably when</p> <p>8 the check is -- I would believe when the</p> <p>9 check is released by the bookkeeping</p> <p>10 department to be sent. But it is possible</p> <p>11 it is when the disbursement memo is, and</p> <p>12 then sometimes, you know, a bundle of</p> <p>13 checks may sit for some period of time.</p> <p>14 So there may be some that are entered and</p> <p>15 mailed later.</p> <p>16 Q. And based on your experience,</p> <p>17 are these records kept accurately at Kohn</p> <p>18 Swift & Graf in terms of it shows you paid</p> <p>19 an expense of someone on this case and</p> <p>20 that is what you did?</p> <p>21 A. Yes, a great deal of our firm's</p> <p>22 practice has been in situations where</p> <p>23 courts have reviewed and/or approved fees</p> <p>24 and expenses at the conclusion of the</p> <p>25 case, so these are systems that have been</p>	<p style="text-align: right;">385</p> <p>1 J. KOHN</p> <p>2 Q. What is the nature of the</p> <p>3 action that you filed? What are you suing</p> <p>4 him for?</p> <p>5 A. Again, this procedure does not</p> <p>6 require the filing of a complaint. It</p> <p>7 simply can be the writ of summons. But</p> <p>8 the claims would have been for torts and</p> <p>9 contractual violations.</p> <p>10 THE SPECIAL MASTER: When was</p> <p>11 that action instituted, sir?</p> <p>12 THE WITNESS: I believe in the</p> <p>13 spring of 2012. I think it was prior to</p> <p>14 -- two years from the time that the 1782</p> <p>15 proceedings with Stratus were beginning to</p> <p>16 get under way or were revealing</p> <p>17 information.</p> <p>18 Q. You mentioned a couple of times</p> <p>19 the Calmbacher deposition and no one</p> <p>20 appearing on behalf of the plaintiffs.</p> <p>21 A. Yes.</p> <p>22 Q. Did you ever have any</p> <p>23 discussions with Mr. Donziger about why no</p> <p>24 one appeared on behalf of the plaintiffs?</p> <p>25 A. I know I mentioned it at the</p>

97 (Pages 382 to 385)

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<p style="text-align: right;">386</p> <p>1 J. KOHN</p> <p>2 meeting at the Susman firm in March of</p> <p>3 2010. I don't think there was necessarily</p> <p>4 a clear response other than --</p> <p>5 MR. GOMEZ: Objection,</p> <p>6 privileged.</p> <p>7 THE SPECIAL MASTER: Wait a</p> <p>8 minute. Wait one second. I need to hear</p> <p>9 the answer to hear whether the</p> <p>10 communication was in furtherance of the</p> <p>11 fraud.</p> <p>12 A. I believe the response --</p> <p>13 THE SPECIAL MASTER: Wait a</p> <p>14 minute. I think I need to hear it in</p> <p>15 camera. That is to say they need to leave</p> <p>16 the room.</p> <p>17 This is at a time notice that</p> <p>18 was covered by the period -- while the</p> <p>19 proceeding in Colorado, the 1782</p> <p>20 proceeding in Colorado was going on, and</p> <p>21 that is one of the specifications of</p> <p>22 fraudulent conduct or potentially</p> <p>23 fraudulent conduct that Judge Kaplan has</p> <p>24 made.</p> <p>25 MS. NEUMAN: This is, though,</p>	<p style="text-align: right;">388</p> <p>1 J. KOHN</p> <p>2 happen in the future, something to that</p> <p>3 effect.</p> <p>4 THE SPECIAL MASTER: All right,</p> <p>5 bring them in. I don't think that is</p> <p>6 privileged.</p> <p>7 (Ms. Neuman, Mr. Stavers and</p> <p>8 Mr. Martin return to the room.)</p> <p>9 THE SPECIAL MASTER: You can</p> <p>10 read the answer. It is not privileged.</p> <p>11 BY MS. NEUMAN:</p> <p>12 Q. Did Mr. Donziger ever discuss</p> <p>13 with you at any time his conversation with</p> <p>14 Dr. Calmbacher before his deposition in</p> <p>15 which he discouraged him from testifying?</p> <p>16 A. Nope.</p> <p>17 Q. Mr. Russell, who was the</p> <p>18 original person in charge of the</p> <p>19 plaintiffs' inspections in Ecuador, was</p> <p>20 fired by Mr. Donziger.</p> <p>21 Do you recall that?</p> <p>22 A. Well, I remember a couple of</p> <p>23 things. I remember that Mr. Russell</p> <p>24 stopped work on it. I don't know if he</p> <p>25 quit or was fired or had some other, you</p>
<p style="text-align: right;">387</p> <p>1 J. KOHN</p> <p>2 your Honor, after the Kohn Swift & Graf</p> <p>3 firm has withdrawn, and he previously</p> <p>4 testified about the majority of what went</p> <p>5 on in this meeting. So I'm not sure why</p> <p>6 this one --</p> <p>7 THE SPECIAL MASTER: The rest</p> <p>8 of it is either privileged or not. That</p> <p>9 is water under the dam. But this one I</p> <p>10 think -- I would like to hear the answer</p> <p>11 before I go further.</p> <p>12 (Ms. Neuman, Mr. Stavers and</p> <p>13 Mr. Martin depart the room.)</p> <p>14 MS. HAMILL: Can you for my</p> <p>15 benefit read back the question, please.</p> <p>16 (The record was read.)</p> <p>17 A. Very briefly, at the meeting at</p> <p>18 the Susman firm in the spring of 2010, my</p> <p>19 recollection is I pointed that out or</p> <p>20 certainly it was in connection with -- I</p> <p>21 explained I had spoken with the lawyer at</p> <p>22 the Constantine firm, and my recollection</p> <p>23 is Donziger had kind of a well, you know,</p> <p>24 we are getting reorganized, we are kind of</p> <p>25 screwed up, but those kind of things won't</p>	<p style="text-align: right;">389</p> <p>1 J. KOHN</p> <p>2 know, mutual separation.</p> <p>3 And I'm not 100 percent clear,</p> <p>4 I guess he was there at the beginning of</p> <p>5 the inspection process, not just in the</p> <p>6 earlier phases.</p> <p>7 Q. To the extent Mr. Donziger --</p> <p>8 THE SPECIAL MASTER: Ms. Neuman,</p> <p>9 you have a two-minute warning.</p> <p>10 MS. NEUMAN: Thank you.</p> <p>11 Q. To the extent Mr. Donziger</p> <p>12 hired and fired people like Mr. Russell,</p> <p>13 Mr. Calmbacher, Mr. Castro, who were</p> <p>14 involved in and running the judicial</p> <p>15 inspections in Ecuador, were those actions</p> <p>16 he took of his own accord or did he</p> <p>17 consult you first before hiring or firing</p> <p>18 those individuals?</p> <p>19 MR. GOMEZ: Objection, assumes</p> <p>20 facts.</p> <p>21 THE SPECIAL MASTER: No, it was</p> <p>22 saved by "to the extent." It is as if she</p> <p>23 added the words "if any." It begins with</p> <p>24 the words "to the extent that."</p> <p>25 MR. GOMEZ: This is a</p>

98 (Pages 386 to 389)

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<p style="text-align: right;">390</p> <p>1 J. KOHN</p> <p>2 hypothetical?</p> <p>3 THE SPECIAL MASTER: No, "if</p> <p>4 any." It is like adding the parenthetical</p> <p>5 "if any." That is to say if he did that,</p> <p>6 if he was doing that. Go ahead, answer</p> <p>7 the question. It is not a hypothetical.</p> <p>8 A. In certain situations I was</p> <p>9 consulted before engagement of these types</p> <p>10 of individuals or professionals were made,</p> <p>11 certainly before Mr. Russell got involved.</p> <p>12 I have a recollection I was</p> <p>13 aware of it and consulted and agreed to</p> <p>14 move forward with Mr. Russell. I don't</p> <p>15 remember a specific situation with a</p> <p>16 Mr. Calmbacher. I think sort of once the</p> <p>17 system was in place with Mr. Russell, if</p> <p>18 he had subcontractors or people working</p> <p>19 for him, I wouldn't necessarily be</p> <p>20 informed of those or preapproved those</p> <p>21 things.</p> <p>22 In the cases of the discharge</p> <p>23 or the termination or the firing, I was</p> <p>24 not consulted before those events. I</p> <p>25 would be made aware of them. And then</p>	<p style="text-align: right;">392</p> <p>1 J. KOHN</p> <p>2 objection is well taken. That's</p> <p>3 argumentative at least. Okay, that is it.</p> <p>4 Thank you very much, Mr. Kohn.</p> <p>5 MR. GOMEZ: I have some</p> <p>6 questions. In addition, I do want to make</p> <p>7 a motion. I will start with the motion.</p> <p>8 THE SPECIAL MASTER: Start with</p> <p>9 the motion.</p> <p>10 MR. GOMEZ: My motion is we</p> <p>11 have had --</p> <p>12 MS. NEUMAN: The witness?</p> <p>13 MR. GOMEZ: Perhaps the witness</p> <p>14 should step out.</p> <p>15 (Witness departs the room.)</p> <p>16 MR. GOMEZ: In anticipation of</p> <p>17 this deposition, we entered into a 502</p> <p>18 stipulation. A 502 stipulation permitted</p> <p>19 the use of certain documents with the</p> <p>20 reservation of rights. That document</p> <p>21 speaks for itself and everyone here is</p> <p>22 aware of it, and we have allowed the</p> <p>23 deposition to proceed today in the</p> <p>24 interest of good faith.</p> <p>25 Mr. Kohn has testified to</p>
<p style="text-align: right;">391</p> <p>1 J. KOHN</p> <p>2 later I think I cited some examples where</p> <p>3 in certain situations Mr. Donziger was</p> <p>4 making commitments and promises to people</p> <p>5 that I was not preinformed about, but</p> <p>6 informed later and then told that they</p> <p>7 needed some funding or some budget for</p> <p>8 some decision that had already been made.</p> <p>9 So it is a mixture.</p> <p>10 Q. You are aware that Mr. Donziger</p> <p>11 testified before the Lantos Commission?</p> <p>12 A. I remember a committee or a</p> <p>13 meeting room in Washington D.C. Is that</p> <p>14 what you are referring to? It is a</p> <p>15 one-day or a one-morning event, yes.</p> <p>16 THE SPECIAL MASTER: You have</p> <p>17 one last question.</p> <p>18 THE WITNESS: This will be a</p> <p>19 compound question. Strike that.</p> <p>20 Q. In your view, could the</p> <p>21 plaintiffs ever accurately portray</p> <p>22 Mr. Cabrera as independent, an independent</p> <p>23 expert or a special master?</p> <p>24 MR. GOMEZ: Objection.</p> <p>25 THE SPECIAL MASTER: The</p>	<p style="text-align: right;">393</p> <p>1 J. KOHN</p> <p>2 numerous questions regarding his mental</p> <p>3 impressions of the Lago Agrio litigation,</p> <p>4 and many of those impressions arise out of</p> <p>5 questions that originated with the</p> <p>6 documents that were the subject of the</p> <p>7 502.</p> <p>8 My motion is to, at this time,</p> <p>9 is to strike all of the testimony</p> <p>10 regarding his mental impressions of such,</p> <p>11 or, in the alternative, to preserve, as</p> <p>12 per the 502 agreement, my clients'</p> <p>13 objections. That's my motion.</p> <p>14 THE SPECIAL MASTER: The motion</p> <p>15 is denied.</p> <p>16 Number one, I couldn't help but</p> <p>17 notice, Mr. Gomez, that in the last two</p> <p>18 days, approximately 30 documents in the</p> <p>19 502 dealing with Ms. Garr and Mr. Cohen</p> <p>20 were introduced. You objected to the</p> <p>21 introduction of exactly one out of the 30.</p> <p>22 While the 502 preserves your privilege,</p> <p>23 when it comes time, as it did come time to</p> <p>24 introduce them, as you did in the case of</p> <p>25 the McDermott deposition, if you want to</p>

99 (Pages 390 to 393)

<p style="text-align: right;">394</p> <p>1 J. KOHN</p> <p>2 preserve the privilege, you have to assert</p> <p>3 it at the use of the document.</p> <p>4 Those documents -- and you did</p> <p>5 it in one instance in connection with the</p> <p>6 Garr deposition yesterday and you did it</p> <p>7 numerous times in connection with the</p> <p>8 McDermott deposition. But you do have to</p> <p>9 assert, notwithstanding the 502, you have</p> <p>10 to assert the privilege if you want to</p> <p>11 maintain it.</p> <p>12 And the reason I was going to</p> <p>13 raise this with you, because I was</p> <p>14 wondering what it is you were doing here</p> <p>15 and why it is, if you are still doing it,</p> <p>16 why it is you are going to be making me go</p> <p>17 through a bunch of documents, 400 plus,</p> <p>18 for review when the most important of</p> <p>19 them, the 29 most important were not</p> <p>20 objected to when they were introduced</p> <p>21 today.</p> <p>22 So I haven't gone to the issue</p> <p>23 of total waiver yet, but you certainly had</p> <p>24 an obligation to assert the privilege, as</p> <p>25 you recognized yesterday in one instance</p>	<p style="text-align: right;">396</p> <p>1 J. KOHN</p> <p>2 absolutely out of order. It is not only</p> <p>3 denied, I think it is just out of order.</p> <p>4 What did you think you were</p> <p>5 doing in not objecting and not asserting a</p> <p>6 privilege as the documents were being</p> <p>7 introduced?</p> <p>8 MR. GOMEZ: Your Honor, the 502</p> <p>9 specifically states that it is stipulated</p> <p>10 that Chevron may use these documents in</p> <p>11 any respect, including, but not limited</p> <p>12 to, all depositions.</p> <p>13 THE SPECIAL MASTER: Yes. It</p> <p>14 may use them, but you have to assert the</p> <p>15 privilege. That's how 502 works. That's</p> <p>16 my understanding of 502.</p> <p>17 In fact, you specifically asked</p> <p>18 me in an e-mail or on a phone call, you</p> <p>19 specifically asked me now that we have a</p> <p>20 502, are you going to be ruling on the</p> <p>21 privilege -- are you going to be reviewing</p> <p>22 the documents for privilege, and I said it</p> <p>23 is my understanding that the issue doesn't</p> <p>24 come up until you use them, until you seek</p> <p>25 to use them at a deposition or at trial.</p>
<p style="text-align: right;">395</p> <p>1 J. KOHN</p> <p>2 with Ms. Garr and as you did in many</p> <p>3 instances with Mr. McDermott. The 502</p> <p>4 doesn't relieve you of the obligation to</p> <p>5 assert the privilege, if you have one,</p> <p>6 when the document is introduced and is</p> <p>7 first used. You didn't assert any</p> <p>8 privilege today at all. That's number</p> <p>9 one.</p> <p>10 Number two, had you, in</p> <p>11 connection with the testimony, asserted</p> <p>12 privilege with respect to his mental</p> <p>13 impressions, I would have dealt with it as</p> <p>14 I have in the past. For example, as I did</p> <p>15 yesterday, I might well have ruled that</p> <p>16 there was a waiver on the whole subject as</p> <p>17 there was by dint of the testimonial</p> <p>18 waiver in the Donziger 1782 when these</p> <p>19 subjects were gone into in the greatest of</p> <p>20 length without the slightest privilege</p> <p>21 objection.</p> <p>22 You can't simply sit there and</p> <p>23 watch the witness testifying without</p> <p>24 asserting a privilege objection if you</p> <p>25 have one. I'm sorry. Your motion is</p>	<p style="text-align: right;">397</p> <p>1 J. KOHN</p> <p>2 You had an obligation to assert</p> <p>3 privilege the minute they were introduced,</p> <p>4 as you did yesterday, and I ruled on it,</p> <p>5 you may recall. That was the one and only</p> <p>6 time in 30 -- in at least 30, maybe 40</p> <p>7 uses of the Garr and Kohn documents.</p> <p>8 Frankly, before you made your</p> <p>9 motion, I was about to excuse the witness</p> <p>10 and ask on the record do I really need to</p> <p>11 go through these boxes anymore and is</p> <p>12 there anything left to your appeal? And</p> <p>13 the answer is absolutely not. You didn't</p> <p>14 assert, as to the 30 most important</p> <p>15 documents out of that whole category of</p> <p>16 450 documents, as to which you now have</p> <p>17 taken an appeal, you objected to exactly</p> <p>18 one. Why would I have to go through these</p> <p>19 boxes now and why isn't that appeal</p> <p>20 absolutely academic? Of course it is.</p> <p>21 And the only question remaining</p> <p>22 as far as I'm concerned now is whether you</p> <p>23 have committed a waiver of all of those</p> <p>24 documents, as to all of those documents,</p> <p>25 even for trial purposes, because you</p>

100 (Pages 394 to 397)

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<p style="text-align: right;">398</p> <p>1 J. KOHN</p> <p>2 didn't assert a privilege when you had an</p> <p>3 opportunity to do so as to the 30 most</p> <p>4 important, excuse me, 29 out of the 30</p> <p>5 most important.</p> <p>6 And I notice a very deafening</p> <p>7 silence here in this room.</p> <p>8 MR. GOMEZ: Your Honor, I</p> <p>9 reserve my clients' rights --</p> <p>10 THE SPECIAL MASTER: You can</p> <p>11 reserve your clients' right. Read that</p> <p>12 stipulation again, and I read it</p> <p>13 specifically again because I couldn't help</p> <p>14 but notice that out of the 15 or so</p> <p>15 documents that were introduced yesterday,</p> <p>16 you objected to exactly one, and I then</p> <p>17 went back and looked at the stipulation</p> <p>18 again.</p> <p>19 I said to myself, you know, am</p> <p>20 I missing something, and the answer is no.</p> <p>21 I reread the stipulation. That preserves</p> <p>22 your privilege for assertion at the right</p> <p>23 time. Today was the right time. And</p> <p>24 yesterday was the right time. And</p> <p>25 independent of that, the witness'</p>	<p style="text-align: right;">400</p> <p>1 J. KOHN</p> <p>2 you in McDermott, and you did the wrong</p> <p>3 thing, you didn't ask the three that you</p> <p>4 asked for, you asked a fourth, as you</p> <p>5 noticed. But in any event, we are all</p> <p>6 smiling about that, but that's a separate</p> <p>7 issue. I want to deal with this issue</p> <p>8 first.</p> <p>9 As to the witness' testimony,</p> <p>10 you have no -- you have no additional</p> <p>11 rights. You have no privilege. If you</p> <p>12 didn't assert a privilege, and if I didn't</p> <p>13 rule on it, you have no right to appeal,</p> <p>14 there is nothing to appeal. I don't care</p> <p>15 where he got his mental impressions. You</p> <p>16 had an obligation to assert a privilege if</p> <p>17 there were one, and you did assert</p> <p>18 privileges and I ruled upon some of them.</p> <p>19 In fact, I ruled upon all of them, and</p> <p>20 some of them you won and some of them you</p> <p>21 didn't win. That's what you had to do as</p> <p>22 to the testimony.</p> <p>23 As to the documents, I have</p> <p>24 just told you what I think is clear as a</p> <p>25 bell. There is just no issue about that</p>
<p style="text-align: right;">399</p> <p>1 J. KOHN</p> <p>2 testimonial -- excuse me, any privilege</p> <p>3 you had as to the witness' testimony was</p> <p>4 either asserted and ruled upon or was</p> <p>5 absolutely waived.</p> <p>6 That's my ruling as to every</p> <p>7 branch of your motion, and if you think</p> <p>8 you have -- you know, you can take an</p> <p>9 appeal from that to Judge Kaplan, but you</p> <p>10 don't have -- excuse me, I don't think you</p> <p>11 can take an appeal to Judge Kaplan from</p> <p>12 anything that you didn't object to in the</p> <p>13 testimony, period. That is gone. If you</p> <p>14 didn't make me make a ruling, there is</p> <p>15 nothing to appeal.</p> <p>16 MS. NEUMAN: On the</p> <p>17 questioning, your Honor, I don't believe</p> <p>18 the Lago Agrio plaintiffs subpoenaed or</p> <p>19 cross-noticed --</p> <p>20 THE SPECIAL MASTER: That is a</p> <p>21 separate issue, whether he gets to</p> <p>22 examine. Now, seven hours has passed.</p> <p>23 You would have to make a demonstration to</p> <p>24 me in camera before I give you even the</p> <p>25 three or four that you got, which I gave</p>	<p style="text-align: right;">401</p> <p>1 J. KOHN</p> <p>2 as far as I can see. I reread the 502</p> <p>3 with that point specifically in mind</p> <p>4 because I was wondering yesterday why</p> <p>5 would anybody want me to go through all</p> <p>6 these 450 documents again and why is there</p> <p>7 an appeal. Okay? You can understand why</p> <p>8 I would ask that question.</p> <p>9 In any event, shall we leave</p> <p>10 that subject? You have my ruling on this</p> <p>11 motion.</p> <p>12 MR. GOMEZ: I have your ruling.</p> <p>13 THE SPECIAL MASTER: Okay. I</p> <p>14 didn't need to hear anything from anybody</p> <p>15 else on this because I thought through the</p> <p>16 issue beforehand for a different reason,</p> <p>17 as you heard.</p> <p>18 Now, in terms of, if you want</p> <p>19 to ask a few questions, let's let them all</p> <p>20 leave the room and you make an offer of</p> <p>21 proof to me of what you would do and why</p> <p>22 you couldn't do it before, etc., and</p> <p>23 whether you really need it. And this is a</p> <p>24 witness, by the way, you should</p> <p>25 understand, you will have access to this</p>

101 (Pages 398 to 401)

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<p style="text-align: right;">402</p> <p>1 J. KOHN</p> <p>2 witness for trial purposes. You can</p> <p>3 subpoena him. He is within the subpoena</p> <p>4 power of the court for trial.</p> <p>5 MR. GOMEZ: I understand that.</p> <p>6 THE SPECIAL MASTER: Please</p> <p>7 leave the room. He is going to make an</p> <p>8 offer of proof to me in camera.</p> <p>9 (Ms. Neuman, Mr. Stavers, Mr.</p> <p>10 Martin, Ms. Hamill and Mr. Voss depart the</p> <p>11 room.)</p> <p>12 THE SPECIAL MASTER: What do</p> <p>13 you expect to prove and how many questions</p> <p>14 do you think it is going to take? It is</p> <p>15 now a quarter after 6 and seven hours has</p> <p>16 passed.</p> <p>17 MR. GOMEZ: I understand that.</p> <p>18 I would be requesting 15 minutes to</p> <p>19 question about how he was prepared for</p> <p>20 this deposition.</p> <p>21 THE SPECIAL MASTER: No, no,</p> <p>22 no.</p> <p>23 MR. GOMEZ: Because it is my</p> <p>24 suspicion that Chevron may have assisted</p> <p>25 him in the preparation of the deposition.</p>	<p style="text-align: right;">404</p> <p>1 J. KOHN</p> <p>2 me put it this way: It is not the showing</p> <p>3 of good cause -- you know, routine</p> <p>4 cross-examination where the witness is</p> <p>5 available for trial is not in my judgment</p> <p>6 a showing of good cause under the rule</p> <p>7 that allows the presumption to be</p> <p>8 overcome.</p> <p>9 MR. GOMEZ: I have your ruling.</p> <p>10 THE SPECIAL MASTER: You have</p> <p>11 my ruling.</p> <p>12 Everybody back, one question,</p> <p>13 or it may take two or three questions, but</p> <p>14 the only thing you may elicit is whether</p> <p>15 Chevron participated in his preparation</p> <p>16 for this deposition.</p> <p>17 (Ms. Neuman, Mr. Stavers, Mr.</p> <p>18 Martin, Ms. Hamill, Mr. Voss and the</p> <p>19 witness return to the room.)</p> <p>20 THE SPECIAL MASTER: Actually,</p> <p>21 I did this once before, let me do it.</p> <p>22 MR. GOMEZ: I would like to do</p> <p>23 it, your Honor, if you don't mind.</p> <p>24 THE SPECIAL MASTER: I want to</p> <p>25 make sure it is going to be fast because I</p>
<p style="text-align: right;">403</p> <p>1 J. KOHN</p> <p>2 It is also -- I think I should</p> <p>3 be able to question him as to whether he</p> <p>4 has been contacted by Chevron since he</p> <p>5 withdrew from the case and now, whether he</p> <p>6 has been threatened with a suit by Chevron</p> <p>7 in order to persuade him to testify in a</p> <p>8 particular way, whether he has reached any</p> <p>9 kind of agreement with Chevron.</p> <p>10 THE SPECIAL MASTER: No, no,</p> <p>11 no. You didn't cross-notice him. This is</p> <p>12 clearly cross-examination material if used</p> <p>13 at trial. No, no, you can subpoena him</p> <p>14 for trial on this.</p> <p>15 The first one on his</p> <p>16 preparation, that's one question. That I</p> <p>17 will allow. That's it. But the rest is</p> <p>18 just regular cross-examination material.</p> <p>19 I'm not going to let you do that.</p> <p>20 Otherwise the seven-hour limit is</p> <p>21 meaningless.</p> <p>22 MR. GOMEZ: Okay. Well, I</p> <p>23 mean, it is your ruling. I don't agree</p> <p>24 with it, but we will do that.</p> <p>25 THE SPECIAL MASTER: Okay. Let</p>	<p style="text-align: right;">405</p> <p>1 J. KOHN</p> <p>2 am going to stop you if it isn't.</p> <p>3 MR. GOMEZ: I understand.</p> <p>4 MS. HAMILL: May I ask what</p> <p>5 the --</p> <p>6 THE SPECIAL MASTER: The</p> <p>7 subject matter of the questioning is going</p> <p>8 to be one subject and one subject only,</p> <p>9 whether or not Chevron participated in the</p> <p>10 preparation of the witness for this</p> <p>11 deposition.</p> <p>12 EXAMINATION BY MR. GOMEZ:</p> <p>13 Q. Mr. Kohn, did anyone working on</p> <p>14 Chevron's behalf provide any assistance to</p> <p>15 you or your counsel to prepare for this</p> <p>16 deposition?</p> <p>17 A. Yes.</p> <p>18 Q. Who, and what assistance was</p> <p>19 that?</p> <p>20 A. Ms. Neuman and I believe</p> <p>21 another attorney from the Gibson Dunn firm</p> <p>22 met with my lawyers, Ms. Hamill and</p> <p>23 Mr. Voss, to discuss certain topics that</p> <p>24 would be covered at the deposition.</p> <p>25 Q. How many meetings occurred for</p>

102 (Pages 402 to 405)

<p style="text-align: right;">406</p> <p>1 J. KOHN</p> <p>2 that purpose?</p> <p>3 A. I'm aware of one.</p> <p>4 Q. When did that meeting occur?</p> <p>5 A. Fairly recently, I believe it</p> <p>6 was last week.</p> <p>7 Q. How long was that meeting?</p> <p>8 A. I do not know the time. I was</p> <p>9 not present, but I gathered it was -- I</p> <p>10 don't know. I mean, more than an hour or</p> <p>11 two I would think.</p> <p>12 Q. Who was present in that</p> <p>13 meeting?</p> <p>14 A. I know Patricia Hamill was,</p> <p>15 Joshua Voss was, I believe Ms. Neuman was</p> <p>16 there and another -- at least one other</p> <p>17 Gibson Dunn lawyer I believe. I'm not</p> <p>18 sure who or if I was even informed who.</p> <p>19 Q. And can you be more specific</p> <p>20 about the nature of the assistance --</p> <p>21 about the exchanges that were made between</p> <p>22 Gibson counsel and your counsel in</p> <p>23 preparation for this deposition?</p> <p>24 A. As I understand it, our firm's</p> <p>25 counsel, my counsel, wanted to know if</p>	<p style="text-align: right;">408</p> <p>1 J. KOHN</p> <p>2 again, if there were answers being</p> <p>3 provided, Ms. Hamill or Mr. Voss may have</p> <p>4 indicated what they understood I knew</p> <p>5 about the situation. They may have</p> <p>6 offered that. I don't recall that they</p> <p>7 did, or I wasn't aware that they did or I</p> <p>8 wasn't informed that they did.</p> <p>9 It came to me as these are the</p> <p>10 topics that are -- that Ms. Neuman was</p> <p>11 willing to represent would be covered, but</p> <p>12 it was by no means an exclusive list or it</p> <p>13 was by no means binding in any way, shape</p> <p>14 or form as I understood it. I was told to</p> <p>15 be ready for anything.</p> <p>16 Q. Was any of that information</p> <p>17 provided in writing from Gibson to your</p> <p>18 attorneys?</p> <p>19 A. I'm not aware of any writing.</p> <p>20 THE SPECIAL MASTER: That's it.</p> <p>21 Thank you, Mr. Kohn.</p> <p>22 THE WITNESS: Thank you,</p> <p>23 Mr. Gitter. Thank you, Counsel.</p> <p>24 MS. NEUMAN: Thank you.</p> <p>25 THE VIDEOGRAPHER: We are going</p>
<p style="text-align: right;">407</p> <p>1 J. KOHN</p> <p>2 Ms. Neuman was willing to share with them</p> <p>3 the topics or subject matter that she</p> <p>4 intended to ask about so that they could</p> <p>5 inform me and we could be better prepared,</p> <p>6 or if there was some issues that required</p> <p>7 some research or some further study on my</p> <p>8 part, that we would have some opportunity</p> <p>9 to do that so that the deposition time</p> <p>10 would be used effectively, efficiently.</p> <p>11 Q. Did the Gibson attorneys</p> <p>12 provide your attorneys with suggestions on</p> <p>13 responses to the questions you gave here</p> <p>14 today?</p> <p>15 MS. HAMILL: Objection to the</p> <p>16 form. I think we are starting to get into</p> <p>17 potentially privileged territory between</p> <p>18 our counseling of Mr. Kohn for purposes of</p> <p>19 this deposition and --</p> <p>20 THE SPECIAL MASTER: I will let</p> <p>21 him answer that question. That's it.</p> <p>22 A. I do not believe they provided</p> <p>23 answers. They were providing the</p> <p>24 questions or the topics so that we knew</p> <p>25 what topics would be covered, and if --</p>	<p style="text-align: right;">409</p> <p>1 J. KOHN</p> <p>2 off the record. The time is 6:18 p.m.</p> <p>3</p> <p>4 [TIME NOTED: 6:18 p.m.]</p> <p>5</p> <p>6 JOSEPH KOHN</p> <p>7</p> <p>8 Subscribed and sworn to before me</p> <p>9 this _____ day of _____, 2013.</p> <p>10</p> <p>11 NOTARY PUBLIC</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

103 (Pages 406 to 409)

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<div style="display: flex; justify-content: space-between;"> <div style="width: 40px; text-align: right;">1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</div> <div style="width: 90%;"> <p style="text-align: center;">INDEX</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">WITNESS</th> <th style="text-align: left;">EXAMINATION BY</th> <th style="text-align: left;">PAGE</th> </tr> <tr> <td>KOHN</td> <td>NEUMAN</td> <td>6</td> </tr> <tr> <td></td> <td>GOMEZ</td> <td>405</td> </tr> </table> <p style="text-align: center;">EXHIBITS</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">PLAINTIFF'S</th> <th style="text-align: left;">DESCRIPTION</th> <th style="text-align: left;">PAGE</th> </tr> <tr> <td>Exhibit 4001</td> <td>Subpoena to Kohn</td> <td>9</td> </tr> <tr> <td>Exhibit 4002</td> <td>Exhibit A to Protective Order</td> <td>13</td> </tr> <tr> <td>Exhibit 4003</td> <td>KSG00135246-00135258</td> <td>48</td> </tr> <tr> <td>Exhibit 4004</td> <td>KSG00055094-00055097</td> <td>140</td> </tr> <tr> <td>Exhibit 4005</td> <td>KSG00028684-00028686</td> <td>149</td> </tr> <tr> <td>Exhibit 4006</td> <td>KSG00004278-00004280</td> <td>203</td> </tr> <tr> <td>Exhibit 4007</td> <td>KSG00092076-00092082</td> <td>246</td> </tr> <tr> <td>Exhibit 4008</td> <td>Letter from Soltani to Cox dated 2/28/06</td> <td>303</td> </tr> <tr> <td>Exhibit 4009</td> <td>Transcript of Clip CRS-170-00 Clip 00</td> <td>338</td> </tr> <tr> <td>Exhibit 4010</td> <td>KSG00015456</td> <td>348</td> </tr> <tr> <td>Exhibit 4011</td> <td>DONZ00014089-00014092</td> <td>353</td> </tr> <tr> <td>Exhibit 4012</td> <td>Document entitled The Executive Committee of the Assembly of the Victims of Texaco</td> <td>359</td> </tr> <tr> <td>Exhibit 4013</td> <td>KSG00125011-00125208</td> <td>368</td> </tr> <tr> <td>Exhibit 4014</td> <td>KSG00170293-00170391</td> <td>380</td> </tr> </table> <p style="text-align: center;">DIRECTIONS NOT TO ANSWER</p> <p>Page Line (NONE)</p> <p style="text-align: center;">REQUESTS</p> <p>Page Line (NONE)</p> </div> </div>	WITNESS	EXAMINATION BY	PAGE	KOHN	NEUMAN	6		GOMEZ	405	PLAINTIFF'S	DESCRIPTION	PAGE	Exhibit 4001	Subpoena to Kohn	9	Exhibit 4002	Exhibit A to Protective Order	13	Exhibit 4003	KSG00135246-00135258	48	Exhibit 4004	KSG00055094-00055097	140	Exhibit 4005	KSG00028684-00028686	149	Exhibit 4006	KSG00004278-00004280	203	Exhibit 4007	KSG00092076-00092082	246	Exhibit 4008	Letter from Soltani to Cox dated 2/28/06	303	Exhibit 4009	Transcript of Clip CRS-170-00 Clip 00	338	Exhibit 4010	KSG00015456	348	Exhibit 4011	DONZ00014089-00014092	353	Exhibit 4012	Document entitled The Executive Committee of the Assembly of the Victims of Texaco	359	Exhibit 4013	KSG00125011-00125208	368	Exhibit 4014	KSG00170293-00170391	380	<div style="display: flex; justify-content: space-between;"> <div style="width: 40px; text-align: right;">1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</div> <div style="width: 90%;"> <p style="text-align: center;">ERRATA SHEET</p> <p style="text-align: center;">VERITEXT REPORTING COMPANY</p> <p style="text-align: center;">1250 BROADWAY</p> <p style="text-align: center;">NEW YORK, NEW YORK 10001</p> <p style="text-align: center;">212-279-9424</p> <p>NAME OF CASE: CHEVRON v. DONZIGER</p> <p>DATE OF DEPOSITION: JUNE 6, 2013</p> <p>NAME OF DEPONENT: JOSEPH KOHN</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left;">PAGE</th> <th style="text-align: left;">LINE(S)</th> <th style="text-align: left;">CHANGE</th> <th style="text-align: left;">REASON</th> </tr> <tr><td>7</td><td></td><td></td><td></td></tr> <tr><td>8</td><td></td><td></td><td></td></tr> <tr><td>9</td><td></td><td></td><td></td></tr> <tr><td>10</td><td></td><td></td><td></td></tr> <tr><td>11</td><td></td><td></td><td></td></tr> <tr><td>12</td><td></td><td></td><td></td></tr> <tr><td>13</td><td></td><td></td><td></td></tr> <tr><td>14</td><td></td><td></td><td></td></tr> <tr><td>15</td><td></td><td></td><td></td></tr> <tr><td>16</td><td></td><td></td><td></td></tr> <tr><td>17</td><td></td><td></td><td></td></tr> <tr><td>18</td><td></td><td></td><td></td></tr> <tr><td>19</td><td></td><td></td><td></td></tr> <tr><td>20</td><td></td><td></td><td></td></tr> </table> <p style="text-align: right; margin-right: 100px;">_____ JOSEPH KOHN</p> <p>SUBSCRIBED AND SWORN TO BEFORE ME</p> <p>THIS ___ DAY OF _____, 20__.</p> <p style="text-align: right; margin-right: 100px;">_____ (NOTARY PUBLIC) MY COMMISSION EXPIRES:</p> </div> </div>	PAGE	LINE(S)	CHANGE	REASON	7				8				9				10				11				12				13				14				15				16				17				18				19				20			
WITNESS	EXAMINATION BY	PAGE																																																																																																																	
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104 (Pages 410 to 412)

A			
ability 8:23	376:4,5,7,10	93:12 99:15	230:12
103:16 104:8	376:22 377:3,7	103:15,20	added 389:23
187:4 250:24	377:18,22	104:6,23	adding 358:11
262:16 265:10	378:4,17,22	106:24 115:10	390:4
298:18 332:11	379:2,3,3,6,24	136:17,19	addition 25:11
332:18	accountant	145:12 147:5	74:24 124:10
able 74:16 76:19	110:20,24	158:15 178:2	224:25 308:17
160:21 281:12	accounting 11:20	180:10 255:7	356:16,21
287:12 292:22	11:24 74:15	281:9 291:25	392:6
358:9 403:3	93:8 110:20	305:16 307:20	additional 95:23
abovementioned	111:6,7 371:18	313:15 315:3,6	96:23 97:3
312:21	accountings	316:25 317:2,4	122:17 154:15
absolute 144:18	368:23 369:6	336:2 342:6	155:7 166:25
237:4	371:21	343:12 344:22	241:16 282:9
absolutely 11:2	accounts 125:21	345:2 346:4,13	400:10
31:7 127:13	125:24 126:12	346:13,15	additionally
132:16 219:8	378:15	347:8 348:12	185:8
220:24 238:20	accredited 78:3	351:5,14,18	additions 356:23
260:7 261:17	78:14	352:10,18,25	address 8:7 94:7
267:25 269:10	accumulation	354:22 384:6	178:8,12
274:5 289:20	92:10	384:14,23	223:13 277:15
358:14 396:2	accuracy 142:13	385:3,11	324:15 349:9
397:13,20	accurate 49:6,8	411:13	addressed 223:11
399:5	49:13 51:21,23	actions 14:25	333:14
abused 289:19	71:23 94:17	15:16,19 33:22	addressee 324:20
academic 397:20	224:16 225:8	124:16 170:19	addressees
acceded 299:8	225:19 228:4	214:24 288:23	284:10
accept 264:10	228:15 241:3	289:8 351:24	addressing
296:7,8	290:5 291:3	389:15	160:19
accepted 226:20	358:8	active 30:21	adds 355:4
274:24 275:10	accurately	281:17 362:23	adequate 279:17
access 37:8 87:8	383:17 391:21	actively 43:20	administration
87:21 88:12	accusatory	44:5	337:6
170:22 240:20	342:10	activism 299:25	administrative
241:18 245:4	acknowledged	activities 59:5	379:25
401:25	206:22	61:16 190:6	adopt 264:10
accident 366:23	acquaintance	192:24 195:14	adopted 274:19
accidentally	198:22 349:13	195:15,23	adopting 265:21
88:14	acquainted	196:6 298:2	advance 85:4
accion 334:6	198:10	299:20,25	92:13 94:12
accompanied	acquiesced	317:16 327:25	95:15 167:25
131:11	117:11	351:24	382:3
accompli 360:17	acquire 317:24	activity 211:19	advances 122:21
accomplishable	acquired 318:3	212:12 292:7	advertisements
279:11	act 104:12 105:3	300:15	133:24
accord 389:16	105:23 106:5	acts 124:14	advice 230:12
account 95:8	106:11 118:14	212:2	245:10
125:25 126:6,7	124:6 212:2,4	actual 25:7	advisor 349:22
368:25 369:3	212:6,9,10,11	43:21 59:17	advocacy 296:22
372:18,19	acted 125:18	60:9 96:9	affidavit 75:16
373:4,4,10,21	147:4 343:10	111:25 182:16	146:14
374:19 375:2,3	acting 40:20	204:25 237:8	affidavits 98:8
375:9,13,19,25	41:14 125:15	274:7 294:16	affiliate 305:18
	action 16:3 60:5	adamant 201:3	312:24
	60:14 87:14	add 117:16	affiliated 55:10

105:7
affiliates
 306:17
affiliation
 53:23
afternoon 328:16
age 186:19
agencies 124:24
agency 305:20
 313:2
agenda 232:3
 236:10 366:17
aggrandized
 237:18
aggressive
 230:17 233:2
ago 64:5 76:4
 247:7
agree 4:10 13:23
 116:19 206:24
 221:22 291:6
 312:9,13
 403:23
agreed 93:4 94:5
 114:22 117:11
 179:4 190:4
 191:10 192:23
 194:2 195:5
 312:13 390:13
agreed upon
 225:18
agreeing 13:20
 94:10 307:7
 311:23 313:9
agreement 34:6,8
 34:10 35:5,11
 45:19,23 46:2
 46:7 98:13
 99:6,23 161:17
 162:6 189:4
 191:3 194:10
 194:18 199:16
 201:21 204:23
 206:10,12
 207:5 217:2,8
 247:4 250:20
 264:4,24
 305:13 306:6
 306:18,21
 307:2,15 313:7
 315:8,11,15,24
 316:6,10 317:6
 331:21,23
 335:12,21
 336:4 353:9,22

354:8,15,18
 355:11,14
 356:4,9,14,25
 357:2 358:12
 384:19,25
 393:12 403:9
agreements 35:14
 35:23 47:18
 99:8 147:3
 161:17,19
 162:12 189:16
 189:19 190:16
 193:15 199:3,6
 199:19,25
 207:20 218:2
 318:24
agrees 236:17
agrio 6:25 7:8
 16:19 18:3
 32:20 41:14
 61:6 63:9
 85:20 86:13
 89:17 251:14
 323:5 324:24
 362:24 363:3
 393:3 399:18
aguinda 21:11
 27:13,17
 247:21 248:15
ahead 110:2
 237:7 242:14
 243:4 317:25
 323:11 340:15
 341:7 343:25
 390:6
al 1:9 4:19
albeit 337:20
 379:24
alberto 22:5
 70:18 80:17
 97:21 118:25
 263:3 321:9
alec 235:24
alegato 280:21
alejandro 53:17
alexis 39:9
allegations
 135:19 243:21
 248:12 249:7
 253:25 345:10
 345:14
alleged 153:13
 241:24
allocate 52:4
allow 403:17

allowed 84:17
 144:8 148:21
 152:9 154:23
 180:14 392:22
allowing 87:24
allows 144:20
 404:7
alluded 135:2
alternative
 393:11
amazon 69:15
 297:17 298:2,8
 298:19 299:18
 300:5,8,16,23
 302:14,18,20
 302:24 303:6
 303:20 352:17
amazonia 58:15
ambitious 291:5
america 255:6
 305:21
american 44:16
amiss 57:3,4
amount 15:10
 56:21 92:22,24
 94:3,5,7,11
 111:3,4 117:13
 190:22,23
 194:14 199:14
 206:11 239:22
 355:23
amounts 95:13
 116:19,23
 117:2,5 204:25
amplify 87:7
analog 103:19
analogize 103:21
analogs 255:7
analysis 55:8
 76:12 242:22
 261:11
ancillary 121:9
andrea 2:5 5:6
andrew 245:21,23
aneuman 2:5
ann 261:2
annex 271:25
annexes 265:19
 270:7 271:14
 271:15
announce 170:23
annoyance 302:3
annual 115:23
 116:2 300:15
answer 7:19

46:25 97:10
 106:17 124:4
 124:21 145:17
 157:5 181:5
 182:9 219:22
 220:23 237:22
 240:2 244:4
 259:5 279:13
 293:21 294:17
 295:3,9,19
 297:10 314:19
 319:15,18
 320:11,16
 325:21 339:6
 339:13 344:13
 352:16 380:2,4
 380:5 386:9
 387:10 388:10
 390:6 397:13
 398:20 407:21
 410:19
answered 145:3
 168:11 367:14
answering 174:10
answers 129:12
 259:3 297:2
 336:13 343:5
 352:17 379:21
 379:21 407:23
 408:2
anticipation
 392:16
antitrust 15:7
anybody 35:12
 65:19 137:9
 138:12 161:22
 193:4 252:25
 253:6 401:5,14
anymore 231:7
 238:5 397:11
anyway 23:16
 298:14 329:5
aol 348:21
apartment 236:12
 236:13
apologize 58:5
apparent 229:13
apparently
 275:22 344:23
appeal 106:20
 397:12,17,19
 399:9,11,15
 400:13,14
 401:7
appeals 177:23

appear 5:24 13:4 20:16,20 46:5 101:22 214:15 288:25 363:11	383:23 approving 69:21 210:17 299:9 approximate 18:25 29:3,15 approximately 4:14 31:25 43:7 82:15,19 92:18 186:18 225:3 393:18 april 136:3 137:2,17,19 138:13 141:6 141:24 142:5,9 142:14 146:20 147:11 150:23 156:4,6 157:16 211:25 215:3 231:17,23,24 236:8 237:5 269:15 279:21 279:22 287:4,5 293:7,16 358:3 arbitrate 35:6,8 35:13 arbitration 32:9 32:11,15 36:11 36:12 area 20:23 24:12 58:23 59:6 255:3 297:23 349:15 areas 14:24 15:4 248:20,24 arent 246:13 arguable 172:12 argue 315:18 arguing 274:21 argument 34:19 34:24 259:20 362:18 argumentative 392:3 arguments 55:16 180:6,7 263:16 362:6,16 arms 63:4 131:24 arnold 27:23 arose 173:9 arranged 87:16 87:20 293:25 arrangement 192:23 193:8 arrangements 218:11	arranging 326:14 art 159:12 article 226:12 365:13,14 articles 59:22 articulate 185:19 287:20 ascertain 242:5 ascertaining 84:14 aside 217:22 304:22 asked 5:20 75:15 127:19 128:6 129:10 133:11 133:17 134:10 136:9 162:24 164:16 181:13 199:18 251:9 252:2 259:15 286:23 308:4 308:10 321:25 333:6,21 347:16 349:23 373:3 375:18 379:18,24 396:17,19 400:4,4 asking 134:6 143:11 161:18 164:5 227:14 276:25 310:24 311:4,5,7 340:22 361:5 aspect 53:9 299:12 aspects 43:17 81:5 235:6 241:17 assembly 359:2 410:16 assert 84:16 86:2 103:16 394:2,9,10,24 395:5,7 396:14 397:2,14 398:2 400:12,16,17 asserted 70:3 395:11 399:4 asserting 345:8 395:24 396:5 assertion 398:22 assertions 83:7 assessing 269:17 269:21	assessment 266:22 273:12 289:12 assessments 296:16 assignments 236:24 282:18 282:24 assistance 37:7 37:10 405:14 405:18 406:20 assistant 3:13 5:16 372:24 376:14 assisted 402:24 assisting 25:2,5 associate 44:10 159:11 associated 42:22 200:16 associates 20:10 association 110:9 assume 7:12 8:11 49:12 123:10 196:2 301:10 assumed 139:14 182:13 193:22 290:22 364:12 assumes 389:19 assumption 139:16 assurance 244:20 assurances 284:18,23 293:6 assure 276:16 assured 200:8 atm 175:9 379:4 atossa 299:5 attach 381:6 attached 16:21 17:8 128:10 222:10 267:5 322:7,9 attaches 144:17 attachment 321:18,20 322:24 attack 78:9 79:10 319:11 325:14 attacking 79:5 attacks 320:5 attempt 238:10
--	---	---	---

311:24 351:3
attempting 135:9
attempts 240:3,4
attend 14:5
 100:25
attended 25:12
 28:4 29:20
 31:14 54:11
 61:23 101:18
 231:24,25
 327:3
attention 181:13
 202:2 300:18
 300:19 301:23
 302:8 321:14
attorney 6:23
 14:22 20:20
 26:21 28:7
 39:22 53:21
 102:6 193:16
 194:3 197:17
 197:19,22
 225:2 230:15
 242:16 250:6
 308:19 314:15
 327:2 333:15
 334:19 337:5
 339:21 340:7
 342:5,8,15,17
 342:20,21
 343:9 344:3
 345:11 346:14
 347:3,7,18
 348:8 358:12
 362:10 363:5,9
 363:11 405:21
attorneyclient
 240:25
attorneys 2:4,9
 2:15 3:6 4:24
 18:8 25:3 28:6
 127:18 190:23
 194:7 197:21
 232:24 234:14
 240:24 355:20
 356:17 407:11
 407:12 408:18
audio 4:8
audit 64:18,23
 64:25 65:2,16
 65:17 126:12
audited 66:3
august 222:4
 224:7 227:15
 232:22 262:20

283:20 284:3,4
 284:15 288:22
 289:21 292:3
 372:22 373:10
 374:19
auspice 21:3
auspices 269:2
author 148:10
 210:11 226:16
authored 283:15
authority 123:17
 123:23 166:6
authorized 351:3
authorizing
 188:10
authors 345:8
automobile
 366:23
avail 85:13
available 88:3,4
 273:22 371:17
 404:5
avenue 1:18 2:3
 4:17
avoided 328:21
 374:12
avoids 315:25
await 7:16
award 205:3
 283:7
awarded 18:9
aware 17:18
 32:23 33:6,8
 36:22,23 39:4
 40:19 41:13,20
 45:25 68:16
 69:10 71:3
 76:2,4 95:9,10
 95:14 102:10
 102:11,17,20
 102:23 103:4
 113:3,7 120:15
 121:20 126:16
 134:19 135:13
 143:10 181:8
 184:21 194:24
 195:4 196:8
 199:4,5 200:3
 208:7 210:9
 213:8 214:10
 260:4,24
 261:14 262:2
 268:2,7 269:7
 269:15,19,20
 269:24 270:2

270:14,15
 277:8,16
 286:18 298:11
 319:25 326:4,8
 331:17 335:4
 348:7,10
 352:22 364:10
 378:2,7 390:13
 390:25 391:10
 392:22 406:3
 408:7,19
awareness 270:21

B
b 2:10 244:7
 271:25 410:6
back 38:14 66:2
 66:10 87:3,12
 116:10 162:14
 163:13 172:11
 177:5 181:4
 220:6 221:6
 233:24 234:5
 235:25 236:8
 237:5 239:18
 244:12,15
 250:18 251:6
 258:20 269:6
 271:12,20
 297:9 309:9
 310:15 311:9
 324:19 326:11
 328:11,18
 329:11 330:8
 330:22 331:2
 337:11 343:5
 374:16 376:12
 387:15 398:17
 404:12
background 36:15
 110:20 113:14
 113:20,23
 216:10,12
 243:6 246:4
 254:21 311:21
backtrack 106:17
backup 227:10
 228:2 375:12
bad 185:9
bag 220:6,7,10
 220:25
baldwin 235:23
 235:24
banco 372:18
 378:14

bandying 275:4
bank 125:21,24
 125:25 126:12
 369:2 373:22
 375:25 376:6,8
 378:19 379:2,4
 379:5,23
banks 378:25
bar 234:24
barnes 131:5
 171:22 172:6
 173:18 177:12
 177:16 178:6
 178:11,21
 179:3,7 180:11
 180:16 181:9
 181:21 182:19
 183:14,16
 184:3,10
 185:20 186:5
 186:19 187:16
 188:3,18,21,25
 189:8,23 191:4
 191:5 192:10
 192:14 193:11
 193:16 194:3
 194:19,23
 195:6,12,13
 196:7 198:22
 199:7,8 200:16
 201:5,12 285:7
 285:8,24 286:4
 286:12,19,24
 287:20
barrier 102:2
base 368:4
based 15:22
 92:15 151:9
 183:3 185:11
 193:8 195:7
 197:12 281:9
 356:11 383:16
 384:7
basic 8:17 37:4
 175:15 227:16
 247:15 367:2
basis 32:21
 43:16 65:7,8
 93:5,15,22
 114:22 115:23
 119:10 161:21
 172:5 174:24
 227:18 279:18
 281:22 355:21
 370:13 371:12

379:14
bates 12:17 48:9
 81:13 82:7,15
 82:18 96:9,11
 140:20 149:21
 204:5,8,15
 222:8,13,14,19
 246:23 304:11
 304:16 321:10
 321:23 348:19
 353:11,24
 368:14 380:9
bearhugging
 234:25 235:13
 237:10
bearing 140:20
 321:10 348:19
 353:11
bears 48:9
 149:21 222:8
 222:12,19
 246:23 368:14
 380:9
becoming 80:9,10
 260:2 286:18
began 159:25
 160:19 231:16
 270:8 281:19
 370:12 372:2
beginning 32:9
 85:5 87:5
 112:19 177:7
 177:20 213:13
 229:21 258:22
 317:11 330:24
 338:19 339:16
 362:11 385:15
 389:4
beginnings 278:5
begins 204:16
 389:23
begun 136:8
behalf 5:7,10,18
 7:5 40:20
 41:14 71:6
 94:25 97:19
 113:5 116:12
 123:18 124:6
 124:14 125:11
 177:13 178:2
 180:12 181:6
 181:20 184:22
 185:5,15,16,18
 185:21 188:19
 192:15 195:15

214:16 242:3
 264:6 299:21
 302:21 385:20
 385:24 405:14
behavior 230:17
 240:12 246:8
believe 8:21
 13:2,7 17:14
 19:3 20:8 21:4
 23:7,14 24:18
 24:21,22 26:3
 27:22 28:2,3
 28:20,25 29:22
 30:14,22 31:2
 31:3 32:7,16
 35:6,18 36:23
 37:19 38:3,17
 39:18,20 41:8
 43:4 44:21
 47:10 48:15
 49:8 52:20
 54:15,20 55:6
 55:11 72:5
 73:8,13,16
 75:21 77:19
 82:18 88:20
 95:17 97:6
 98:12 99:13
 108:11 112:20
 123:8 125:4
 127:16 129:15
 136:6 158:2,9
 159:4 166:12
 167:15 169:4
 169:18 181:2,6
 183:15,23
 184:6 186:7,9
 194:25,25
 197:8,14 202:5
 203:12 215:20
 217:5 218:6
 220:11 221:19
 223:3 224:3
 226:6 232:3,6
 245:7 247:13
 250:19 257:15
 260:23 280:15
 280:17 285:3
 285:16 287:16
 288:20 293:14
 293:21 294:7,8
 295:19 296:25
 298:3 299:23
 308:14 310:13
 311:20 314:15

314:17 327:8
 332:4 333:19
 339:4 346:5
 347:25 349:7
 349:21 351:7
 353:21 357:18
 359:11 361:13
 370:6 372:24
 377:15 381:3
 383:2,8 384:3
 385:12 386:12
 399:17 405:20
 406:5,15,17
 407:22
believed 134:22
 178:16 182:13
 196:21 286:12
 287:9
bell 400:25
belong 321:20
beltman 264:14
 267:23 268:18
 282:11,21,22
beltmans 225:5
ben 131:5 177:12
 193:16
beneficial
 179:19
beneficiary
 103:2
benefit 66:14
 96:17 387:15
best 166:6
 233:13 245:10
 256:21 367:7
better 81:6
 169:7 244:24
 329:3 350:16
 376:7 407:5
bewildered
 238:20
beyond 51:16
 156:18 199:6
 247:10 274:25
 301:9 372:3
big 128:2,24
 131:23 163:8
 167:3 173:2
 186:3 270:16
 371:15
bigger 173:22
 286:8
biggest 230:5
bilateral 32:14
bill 370:18

373:18,20
 374:4 381:9,10
billing 280:9
billion 17:19
 269:18,21
 275:5,5,13
 283:7,8
binding 408:13
binds 255:20
birth 7:23 27:2
bit 30:3 32:8,13
 36:12 87:7
 114:24 192:20
 370:22
blank 234:22
 277:2
blatant 293:9
block 20:18
 289:5 305:7
 309:15
blocked 230:2,3
blocking 79:13
blood 411:14
bloom 28:18
 29:21 30:3,4
 35:19 36:9
blow 173:21
board 52:8
 171:25 172:7
 173:15 178:7
 178:16 186:6,9
 187:18 198:3
 200:17,19
 226:15 301:11
body 270:6
boggling 236:4
 239:6 246:20
boggs 87:21
 219:4 251:12
 258:8
boiling 33:24
 35:10
bombast 174:5
bonifaz 20:4,4
 20:10,10,17,19
 22:7 26:8,13
 26:16,20,25
 27:5 38:4
 43:19 44:8,11
 45:16 46:4,6,8
 59:25 80:8,13
 80:14,22 98:2
 98:5,14 99:9
 99:22 100:2,12
 101:9 103:6,10

106:14,16,20	breakdown 117:6	bs 132:16	157:3,18,19
107:4 113:23	breaking 275:15	budget 114:11,21	163:5 166:20
114:2,6 263:4	275:18	115:21,22	166:23 218:25
306:7 307:4	breakout 132:2	116:24 117:19	243:24 249:7
313:8 314:11	133:4,10	121:9,12	254:2 257:7
321:7,8 322:5	brent 3:14 4:11	122:11 225:18	259:25 260:3,5
322:15,16,22	bribery 241:24	228:23 229:4	260:15 261:15
322:25 323:13	241:24 254:3	391:7	261:19 262:12
324:9,24 325:4	bridge 329:14,16	budgeted 110:25	264:15,21,25
325:13,23	brief 280:24	budgets 116:14	265:19 267:19
335:3 354:20	briefcase 153:13	116:18 117:18	267:24 268:4
355:8,13	briefing 55:7,17	118:2 282:2	269:16 272:8
356:16 357:7	111:17	building 10:14	272:20 273:19
358:20 359:9	briefly 145:18	62:16 63:5	274:3,19 276:2
359:16 360:7,9	216:16 387:17	bulk 56:15	276:10 277:17
360:19,22	bright 364:23	bunch 394:17	279:20 280:2,3
361:8 363:24	bring 187:10	bundle 383:12	280:14,19
bonifazs 20:7	281:22 309:8	burford 252:5	283:5,6,14
321:15 324:18	313:15 328:2	bush 337:6	284:25 285:14
355:2 357:5,12	330:8 347:21	business 10:6	286:2,7,14
357:14,20	388:5	12:15 15:6	290:2 292:16
bonus 120:5,16	bringing 164:4	53:2 171:7	294:3,13
120:20 121:6	327:5	237:13 318:18	295:17,21
200:9 202:17	broad 8:8 220:4	349:25	296:17 297:6
202:22 203:7	241:21 312:12	businessman	372:23 377:23
204:18 205:10	broader 62:3	349:24	378:5,16
205:23 206:24	255:23 300:5	busy 233:3,23	391:22
bonuses 119:18	333:3 366:6	buy 120:25 121:4	cabreras 128:18
120:9	broadway 412:2	123:7 370:23	131:18 148:10
book 42:19 72:9	broke 128:5	buying 120:24	148:16 261:23
bookkeeper 50:5	broken 92:5		261:25 262:9
110:23 374:24	272:14,15		273:2 274:11
bookkeeping	brokendown 93:19	C	280:6 283:10
383:9	brother 108:14	c 2:2,16 3:2,3	290:10,22
books 65:10 66:8	108:18	6:14 25:8	291:7,14 295:7
72:11,12	brought 100:15	31:23 42:14	calculated 194:6
227:17	100:15 104:5	202:11 271:25	199:12
born 7:25	134:15 178:6	305:7 311:21	california 2:8
bottom 81:17	178:11 191:6	349:15 391:13	173:12 196:15
91:20 96:2	196:19 200:15	cabezas 70:17	call 77:17 79:18
141:12 270:15	285:8 313:19	26:2 126:15	80:22 152:6
284:14 304:3	326:5,9,16	127:10,15,20	165:16 216:15
bought 122:25	328:7 331:18	128:4,11	216:18 233:21
bound 13:21,23	332:5,12,16,20	129:13 130:17	242:9 244:12
371:4	334:3 335:6	130:24 131:15	245:18,20,23
boxes 397:11,19	336:16	131:18,20	247:9 263:15
branch 399:7	brown 173:11,17	133:12,23	281:8 328:17
brazilian 254:22	173:20 196:9	134:2,23 135:3	329:11 331:9
breach 179:18	197:5,10,11,25	135:18,21	361:7 362:4
317:6	198:15,19	142:19,21	375:22 377:13
break 86:23 91:3	200:18 201:2	143:6 144:11	377:15 384:22
114:23 176:7	201:12	145:12 147:15	396:18
177:12 237:4	brownstein	147:17 148:4	called 6:6 70:11
250:25 258:14	214:17 215:8	149:5 151:8,11	76:5 77:4
370:24	bryn 8:2	151:22 156:14	79:12 108:4

167:19 168:21
 171:21 235:20
 244:17 299:17
 361:20 381:12
calling 167:23
 242:18 257:25
calls 36:9
 154:16 192:18
 210:14 218:10
 243:2 245:17
 274:13 278:19
 278:22 340:16
calmbacher
 164:21 167:25
 168:2,18
 169:19 170:24
 257:14 288:5
 385:19 388:14
 389:13 390:16
camacho 2:16
 5:18
camels 250:18
camera 319:15
 341:14,21
 342:9 386:15
 399:24 402:8
camino 58:8
campaign 299:25
 301:16
campaigning
 299:20
campaigns 298:4
candidate 14:21
cannon 167:9
 169:16 170:2
cant 20:22
 105:16 111:23
 129:23 162:25
 164:17 194:12
 218:7 220:6
 235:5 251:10
 260:20 270:17
 281:22 324:20
 327:16 395:22
caption 4:17
card 379:4
care 160:24
 165:18 259:9
 400:14
career 349:14
case 4:18,19,21
 5:22 20:24
 21:2,11,12
 26:10 27:13,17
 33:5,16 37:20

43:13,15,18
 45:14 46:10,11
 46:22 53:7,9
 54:2 55:4
 65:21 72:4
 75:12,22 78:19
 80:6,14 82:13
 92:14 93:8
 95:8,19 98:7
 106:23 110:5
 111:9 113:5,9
 121:19,24
 124:3,11
 139:21,24
 143:5,15,20
 160:15,22
 161:20 164:5
 166:7,8,10,14
 169:8 171:13
 171:15 175:12
 175:15,19
 178:20 180:21
 180:25 183:15
 185:11 190:19
 200:9 202:23
 202:25 206:16
 207:21 209:3
 211:20 213:4
 213:19,19
 215:22 216:3
 216:22 217:3
 217:12 224:24
 228:25 229:6,9
 230:11 231:6
 232:5 235:2,2
 235:5,6 237:15
 237:24 238:23
 239:8 240:10
 240:19 243:23
 244:7 246:13
 249:10,11,20
 250:16 252:11
 252:18 256:8
 256:12 257:8
 258:3,5 262:18
 264:23 275:2
 275:23 278:4
 278:25 281:15
 282:7 286:9
 287:10,19
 288:12,15
 289:2,6,14
 292:8 298:9
 301:25 306:18
 309:12 312:10

312:14,21
 313:14 316:13
 317:11 318:10
 325:5,9 333:19
 334:3 335:3
 350:5 353:9
 356:12 358:13
 361:23,25
 362:13,20
 363:3,12,20,24
 364:9,18,19,22
 365:9,20
 366:23,24
 370:4 383:19
 383:25 393:24
 403:5 412:4
cases 15:13,14
 15:18,20,21
 26:17 93:12
 103:23,25
 171:5 210:10
 274:24 302:23
 338:2 366:21
 384:5 390:22
castro 58:9,14
 389:13
cat 220:5,6,9,24
catch 45:2
 236:16 371:14
categories 52:5
 369:12
category 67:23
 397:15
catolica 76:6,22
 76:25
caught 45:4
cause 297:21
 404:3,6
caused 176:4
causes 57:19
 299:4
caution 160:4
cc 321:9
ceasing 238:22
ceded 298:25
cell 4:6 351:10
central 11:7
centralized
 11:25
centre 3:4
certain 12:20
 13:6 15:9
 24:23 27:8
 36:13 43:9
 53:11 57:10

69:3,18 79:22
 90:25 94:2
 100:3 117:20
 119:6,7 124:8
 126:17 141:9
 154:13 171:9
 177:23 178:2,3
 178:17 182:10
 229:15 234:24
 234:25 235:10
 239:22 251:3
 255:6 256:19
 281:6 296:3
 298:4,12 390:8
 391:3 392:19
 405:23
certainly 10:18
 22:24 37:22
 41:2 43:22
 65:25 81:14
 99:4 100:12
 112:6 124:23
 125:5 136:16
 138:18 148:25
 152:23 153:8
 159:19 185:6
 194:8 199:7,18
 200:25 201:15
 203:13 208:7
 209:22 210:8
 223:3 236:7
 238:12 253:3
 257:14 261:9
 265:13 270:14
 274:23 276:14
 277:4 300:3,13
 301:12 302:17
 318:16 346:9
 351:6 356:8,19
 360:2 362:15
 365:12 377:10
 377:25 378:9
 379:22 387:20
 390:11 394:23
certification
 17:6 411:2
certified 17:4,9
certify 411:6,12
chairman 303:20
chance 149:25
 150:3 204:12
 211:10 350:16
change 60:15
 116:5 181:17
 191:17 229:16

258:15 330:15	133:22 134:20	circumstances	clients 7:6
330:15 356:13	136:8 151:7	313:2	84:15,16
361:16 364:14	157:21 163:8	cited 391:2	146:24 147:10
412:6	167:2 172:2	citing 246:18	199:17 367:7
changed 14:12,19	173:14 177:23	city 54:21	393:12 398:9
68:13 115:25	178:5,15	civ 1:4 4:22	398:11
116:3 181:17	179:21 180:3,8	civil 255:5,23	clip 174:18
378:25	187:18 195:19	claim 18:16 35:7	326:25 328:11
channels 186:25	195:20 196:16	103:17 279:8	338:13,13,20
characterization	196:22 198:3	335:19 378:8	338:25 339:16
307:14	200:17,19	claiming 95:23	340:13,14,19
characterize	201:14 213:9	claims 35:8	340:22 346:25
312:5	213:20 214:4	215:24 255:18	347:17 348:2,3
charge 126:10	241:23 243:22	263:17 346:23	410:13,13
176:3 328:7	244:3 248:13	385:8	close 211:12
378:9 388:18	249:8 268:25	clandestine	closely 209:11
charged 271:11	274:21 275:3	296:19	209:12
271:19 272:12	277:18 278:7	clanging 246:3	cocounsel 10:23
charges 244:2	285:12 299:21	clarify 331:4	171:14 173:7
326:5,16 327:5	300:10,16,19	clarifying 91:7	237:8 342:12
331:17 332:4	300:25 301:5	class 14:25	code 51:25 255:5
332:11,12,13	301:18 315:4	15:16,19,21	255:23
332:15,16,19	318:17 319:2	16:3 93:12	codes 52:3
334:11 335:6	325:8 335:23	103:20 255:7	cofan 354:10
336:16 337:4	335:24 344:15	clean 161:25	coffee 72:8
347:21	346:20 347:23	162:2 292:8	cohen 393:19
charging 270:11	350:20 353:10	cleaning 369:18	colleague 84:13
charles 198:11	353:10 378:12	cleanup 266:7	collected 65:5
chart 57:16	396:10 402:24	275:16	81:18 203:2,2
64:21 73:11	403:4,6,9	clear 6:20 18:7	203:3 205:2
chavez 222:6	404:15 405:9	21:21 28:10	collection 12:4
check 113:14	412:4	36:7 71:5	168:4 280:23
128:10 132:9	chevrons 12:5	91:19 103:7	collective
322:5 357:17	13:3 35:7	121:18 132:11	103:14,15
381:13 383:8,9	127:18 135:18	137:14 159:17	104:6
checkbook 110:22	186:6 214:6	182:14 200:20	college 336:21
376:3	273:19 289:25	237:22 244:11	colorado 2:9
checked 323:12	405:14	244:16 254:10	386:19,20
checking 304:11	chevrontoxico	254:13 256:6	column 56:23,24
379:3	69:22	266:3 288:17	57:11 58:6
checks 383:13	choice 328:24	293:8 297:3	columns 57:6
cheerful 230:24	choose 316:22	310:2,8 318:14	133:25
chevron 1:5 3:15	chose 316:25	326:21 337:2	com 2:5,10 3:7,8
4:18 5:7,10,13	chosen 316:23	386:4 389:3	69:22 348:21
6:22 17:3,10	christopher	400:24	combination
32:7 33:2 35:6	303:20	clearing 232:24	54:17
36:18 40:23	chronologically	clearly 146:9	come 10:2 26:7
41:2,17 68:14	143:9 284:2	165:22 339:8	38:14 78:10
69:9,12 70:11	382:23 383:2	339:13 343:17	114:5 142:25
77:18,21 78:9	chuckling 361:9	403:12	143:2,3 161:25
88:5 89:16	cia 368:11	clerk 152:7	162:2,20
91:8 98:19,22	circuit 88:2	273:20	167:17 170:24
98:25 127:16	99:4 313:17,21	client 25:6	171:9 189:25
128:9,23 131:5	circumspect	243:11 311:15	197:18 201:25
131:12 132:17	169:12	373:18 374:5	225:24 255:18

257:13 265:15	105:20 110:6	345:2,25 385:6	315:23 386:22
286:21 292:8	125:2 186:25	complaints	386:23
310:15 351:13	200:4 202:7	331:20	conducted 40:2
365:6 371:3,11	233:18 361:21	complete 255:17	confer 90:19
393:23 396:24	386:10	292:14 323:3	conference 39:25
comes 163:6	communications	338:8	40:11,15 80:22
322:21 370:23	19:8,12 100:13	completed 34:8	132:2 242:9
393:23	160:5,7 178:19	completely	245:16 278:19
comfort 196:18	208:22 209:19	170:20 175:2	314:21 341:16
coming 13:15	209:20 239:13	238:3 256:9	conferences
121:12 140:15	306:23 352:23	379:21	112:23 125:9
142:21 143:7	communities	complicated	conferred 204:17
144:2 175:19	58:22 59:17	235:17,17,21	confidence
239:18 299:8	100:5	236:2,22	317:25 318:8
317:2 324:19	community 24:11	complied 331:23	confident 213:3
330:6 357:13	125:17	comply 367:6	221:9
371:11,23	companies 305:18	component 48:18	confidential
commanding 9:7	312:24	270:16	66:15 81:9
commencement	company 56:7,14	components	168:14 268:6
26:10	210:3 225:5	275:17	268:10,14
comment 127:17	312:22 412:1	compound 124:18	294:14 295:8
127:21 129:7	comparable 39:21	124:21 391:19	297:6 318:7
131:23 280:14	compared 65:15	computer 11:7	330:13
299:14	171:18 173:4	370:14	confirm 91:4
comments 22:10	comparison 119:9	computers 75:2	confirming 18:24
277:20 280:13	119:10	conceivable	98:15 122:24
commercial 15:6	comparisons	153:20 210:7	306:10
216:11	119:12	concept 59:14	confirms 145:11
commission	compensate	356:8	confused 72:6
302:15 303:21	194:19	concepts 247:15	218:15
391:11 412:25	compensated 71:2	concern 220:5	confusion 76:11
commit 201:18	compensation	279:15	congress 178:9
commitment 50:22	204:19 205:11	concerned 201:5	congresses 125:3
166:13 201:11	312:20 313:3,9	212:21 240:11	congressperson
201:16	369:24	397:22	180:17
commitments	competently	concerning	conjunction
391:4	281:11	177:24	301:6
committed 226:24	compilation	concerted 210:24	connecticut
397:23	48:17	229:14	215:20 216:9
committee 143:16	complain 171:21	concluded 212:23	218:7
161:3,4,6,7,10	173:3	213:4	connection 28:23
166:5 359:2	complaining	conclusion	39:23 65:20
391:12 410:15	211:9	200:10 212:6	74:7 82:8,9,13
communicate 10:7	complains 256:11	296:12 383:24	97:13 99:17
10:22,23	complaint 16:19	conclusions	122:22 131:9
233:16 241:11	17:15,17,20	265:18 270:22	158:14 219:4
241:13	21:17,18 22:2	367:12	255:12 267:3
communicated	43:22 46:16	concur 7:20	306:25 313:10
100:3	98:18,20	conditions 72:9	331:25 333:4
communicating	102:21 104:5	106:23	380:20 387:20
171:11 172:19	104:19 168:14	conduct 8:12	394:5,7 395:11
233:11	173:20 316:2	64:25 177:24	conrad 3:3 12:20
communication	332:25 333:10	242:2 247:5	conradobrien 3:7
10:12,17	334:2 336:24	249:22 250:10	3:8
100:24 101:11	344:19,25	284:17 290:12	consider 148:24

161:13,23
 300:20 302:11
consideration
 310:25 311:14
considered
 146:21 281:11
 316:11
considering
 110:2 145:23
 151:6
consisted 59:15
consistent 58:3
 154:4,10
 313:12 316:5
 316:16
consistently
 219:15
consists 222:3
consolidated
 74:23
consortium
 317:15 318:15
constantine
 162:18 167:8
 168:7 169:16
 170:2 175:23
 387:22
construct 104:3
constructive
 237:8
consult 389:17
consultant
 349:17
consultants
 261:3
consulted 99:17
 99:21 179:3
 245:6 277:23
 390:9,13,24
consulting
 262:20
consumerrelated
 15:8
consumption
 281:7
contact 26:14
 40:4,6 54:24
 98:4 125:5,6
 186:8,16
 198:21 201:13
 207:11 251:17
 251:20 252:16
 284:24 314:22
 351:8
contacted 26:9

55:23 215:17
 215:19 219:3
 251:11,13
 253:2 258:9
 403:4
contacting
 205:21 242:14
 258:10
contacts 27:5,7
 124:23 178:15
 178:17 188:13
 248:14,24,25
 290:2
contained 154:2
contamination
 307:9 313:11
 315:10
contemplating
 161:3
contended 152:2
contending
 179:22
content 69:11,25
contention 77:21
 155:9
contentions
 105:12
contentiousness
 229:23
contents 224:15
context 80:21
 121:9 186:12
 221:2 290:16
 328:6
contingency
 189:21
contingent 189:2
 189:24 193:7
continual 281:21
continually
 46:25
continue 4:9
 76:21 85:25
 160:22 238:10
 293:17 379:13
continued 3:2
 162:16 163:16
 177:8 230:25
 238:12 279:24
 282:3 328:24
 379:9
continuous 14:13
contract 119:6
 332:2 333:6
 336:6

contracting
 195:12
contracts 35:12
contractual
 179:18 385:9
contrarian 201:6
contrary 127:14
 148:18 227:25
 264:22,23
 284:17 363:25
contributed
 298:3
contributing
 72:17
contribution
 95:16 352:7
contributions
 68:25 299:17
control 69:24
 70:3,7 126:5
 234:21 237:11
 289:2 298:25
 345:22 352:8
controlled 69:11
conveniens 98:8
 100:10 106:19
conversation
 80:19 90:18
 103:8,10 123:3
 129:16 130:4
 130:16 131:3,7
 131:9 132:23
 133:4,9 138:4
 146:2 152:24
 156:2 157:24
 169:21 182:23
 183:10 184:13
 184:14 201:2,4
 243:8 244:10
 245:2 274:16
 334:16 340:5
 342:20 348:10
 388:13
conversationally
 221:21
conversations
 4:5 80:17
 113:8 120:8,11
 129:19 135:17
 155:11,14
 156:5,9 157:11
 157:15 200:13
 200:21 201:20
 203:6,13 206:4
 208:10 215:7

215:12 218:23
 225:25 236:5
 250:2,4 256:25
 257:6,10 263:4
 282:4,19
 283:13 290:21
 332:9
converse 101:24
converted 204:25
convey 286:24
cooperate 254:12
cooperation
 250:20,22
 251:4
coordinate 32:21
 239:21
coordinated
 245:19
coordination
 32:22
copies 135:5
 152:7 236:14
copy 11:14,18
 16:18 214:6
 223:20 258:4
 258:10 273:19
corner 49:15
corporate 115:18
 335:16
corporation 1:5
 3:16 4:18 5:8
 5:11,13 6:22
 71:20 248:13
correa 39:6
 350:17 351:4
correes 39:11
correct 12:16
 14:4 19:23
 38:25 57:2
 68:21 69:6
 70:18 73:21
 83:7,15 84:9
 86:7,10,16
 89:6 90:11
 96:15 98:21,23
 115:5,8 116:16
 116:22 125:21
 126:3 136:14
 138:7 197:20
 220:13 228:14
 241:15 247:24
 248:10 249:25
 258:11,12
 261:4 271:13
 272:8 292:17

295:8,18 315:6	407:18	cousin 38:4,5	174:2,4 260:22
315:7 338:22	count 82:22	cover 333:11	326:25 327:14
340:7 344:18	96:10	337:3 343:2,17	332:22 338:12
353:20 358:18	countries 255:5	346:16 381:11	343:6 347:17
361:23 363:5	country 344:22	covered 285:3	crutcher 1:18
375:4	couple 9:19 36:8	386:18 405:24	2:3,8
corrected 181:18	38:13 129:4	407:25 408:11	cullen 127:22,24
correctly 271:9	184:25 252:13	covering 16:13	128:6 129:8,21
correspond 205:2	334:18 337:12	coverup 146:13	129:24 130:2
correspondence	347:2,6 385:18	cox 303:20	130:10 131:4
155:16 156:9	388:22	410:12	131:11,14,22
158:21	course 10:5	crafted 22:6	133:19 135:14
cost 18:16,17	11:21 43:5	craig 30:18	276:7,8 278:19
51:25 226:11	71:7 198:12	crazy 233:22	285:7 337:13
264:2 275:7	272:5 290:13	created 74:15	culminate 282:20
282:25	320:8 329:3	115:2	culminated
costs 11:20	353:19 382:12	crime 327:24	229:12 278:21
18:12 51:4	397:20	328:8	culminating
52:4 65:15,20	court 1:2 4:20	crimefraud	170:16
217:3 229:3	5:3 40:10	320:21 327:20	cumulation
281:23	90:23 96:17	374:7,12	170:13 249:15
couldnt 21:20	97:23 101:22	criminal 42:16	287:23
60:12 69:18	102:3 103:23	42:19 112:13	cumulaton 176:4
100:18 191:12	106:18 126:24	320:6 326:5,16	curiosity 81:2
194:13 238:4	126:25,25	327:5 328:2	168:22
246:12 261:8	127:5,10,12	331:17 332:13	curious 366:20
302:19 361:17	133:13,17	332:16,19	current 7:7 8:3
367:13 368:3	134:13,17	333:19 334:11	8:6
393:16 398:13	144:7,8,16,20	335:6 337:4	currently 9:22
401:22	145:11 146:13	347:21	17:24 349:14
counsel 7:7 9:13	146:15 148:22	criollo 222:7	customary 93:12
12:19 15:15,17	151:22,25	cristobal 20:4,9	cut 49:20 347:13
19:22,25 20:2	152:4,7 260:3	26:8 321:7	
20:13 23:23	263:2,8,11	322:4,21	<hr/>
28:22 31:15	264:6,8 265:2	critical 160:10	D
32:19,20 33:11	265:5,7,25	219:15 231:4	d 25:8 31:23
34:16 35:24,25	273:11,13,15	criticism 133:22	42:14 202:11
40:13 66:12	273:24 290:18	135:3,14	349:15 391:13
81:12 84:19	292:9,13	criticisms	410:2
85:20 86:12	305:16 311:25	127:15	dam 387:9
87:20 97:22	314:20 362:7	criticize 264:10	damage 205:3
136:5 143:17	366:22 377:24	cross 329:13,16	261:11 263:18
146:19,22	378:6 381:8,10	crossed 74:10	263:19 264:3
160:10,13	381:14 384:15	crossexamination	266:22 273:11
161:4 196:23	402:4	403:12,18	275:6 283:7
198:11 202:20	courtappointed	404:4	296:15
204:3 216:21	144:12 248:16	crossexamining	damages 263:17
251:13 271:25	262:11 264:9	342:11	269:17,21
273:20 314:17	courthouse 34:22	crossnotice	275:11 367:20
324:24 363:4	274:7	403:11	dark 289:3
363:12 364:6	courtpermitted	crossnoticed	data 265:8
405:15 406:22	128:12	399:19	date 4:12 7:22
406:22,25,25	courts 260:2,10	crs 338:13	9:9 13:7 19:2
408:23	261:16,20	crs17000 410:13	29:15 36:6
counseling	291:9 383:23	crude 111:14,23	54:22 91:4
			150:19 155:5

214:22 232:16	decide 35:3	degrees 113:16	deposition 1:15
285:9 357:18	319:16	delay 234:19	4:8,15 8:12
357:22 365:3	decided 18:20	delayed 213:19	9:8,9 164:22
365:16,17	114:13 169:7	delaying 213:21	168:2,10,19
380:11 381:15	169:17 356:6	delegitimate	169:19 170:25
412:4	decidedly 346:15	151:7	257:14 269:5
dated 9:6,8	decision 33:25	deleted 82:25	288:5 294:20
96:13 149:13	79:15 103:2	88:15	322:21 323:13
150:18 203:19	104:14,21	demands 126:21	323:18 381:14
223:8 284:3,8	106:18 246:16	225:16,22	385:19 388:14
305:10 309:20	252:20 301:12	275:20	392:17,23
358:3 359:3	301:23 359:23	dematteis 72:19	393:25 394:6,8
410:12	364:6 367:18	dematties 72:3,5	396:25 402:20
dates 29:4	391:8	demonstration	402:25 404:16
150:22 223:2,4	decisionmaking	399:23	405:11,16,24
229:16 322:2	123:23 237:15	demonstrations	406:23 407:9
dave 57:25 76:9	253:9 364:13	112:17,18	407:19 412:4
david 56:12	decisions 33:12	125:10	depositions
day 5:24 16:24	33:14,22	denied 133:13	164:18,20
98:24 127:23	100:10 123:17	206:10 240:19	396:12
131:13 203:24	124:2 170:23	393:15 396:3	des 373:22
223:4 229:17	228:24,24	denigrating	describe 312:12
232:10,10,23	229:9 289:3,9	131:17	described 45:16
233:13,14	370:16	denominated	59:25 111:11
238:25 242:10	deck 231:16	262:3	134:9 146:8
242:10 244:25	declaration	denver 2:9	147:18 199:6
268:19,23	75:16	136:12 142:23	241:6
275:14 291:15	declarations	143:5 144:16	describes 381:23
330:2 337:14	98:7 265:16	145:10 146:15	describing
360:3,3 362:23	269:13	153:3 162:3,15	152:11 247:6
362:23 364:2,3	deems 7:10	165:24 169:5	340:12
376:18 409:8	defeat 180:25	170:6 214:18	description
411:17 412:23	defend 164:18	219:9 257:13	93:25 114:3
days 165:17	defendant 41:4,4	277:3	211:23 213:23
226:22 236:18	248:13 337:23	deny 170:22	340:11 381:24
242:11,17	defendants 1:10	264:11	382:8 410:7
250:14 329:5	2:15 5:18	denying 180:2	descriptions
330:12 393:18	112:13 316:4	241:17 245:3	117:17 380:23
de 58:15	316:12	depart 319:21	380:24 381:3
deafening 398:6	defender 42:15	387:13 402:10	381:19
deal 128:2,24	defensa 58:15	department 28:6	designated 92:6
131:23 163:8	defense 34:6,10	301:25 302:9	92:7 102:22
167:3 173:2	42:16 216:12	339:22 340:6	104:10 124:13
177:18 186:3	288:5 335:23	342:24 344:5	designing 68:7
383:21 400:7	335:25 336:8	345:12 346:6,8	desimone 1:19
dealing 327:4	defensible	383:10	5:4 411:4,20
393:19	290:19	departments 27:9	desks 63:10
dealt 105:14	defined 196:12	departs 220:2	despite 240:21
395:13	definitive 166:8	308:8 327:12	destroy 325:7,7
dear 204:16	286:23	392:15	detail 102:12
december 82:19	deflect 229:15	depending 328:22	147:24 151:9
83:3 87:16,18	deflection 233:2	374:8	153:8 154:10
214:5 231:11	degree 38:19	deponent 6:2	169:9 232:10
368:12	88:8 102:11	412:5	308:6 363:13
decent 267:3	251:4	deposited 378:3	381:17 382:3,4

detailed 145:24	367:16,21	251:23 375:22	181:24 199:7
209:15 220:16	377:19 378:19	379:18	202:18 215:2
details 98:9	395:7 397:13	director 110:8	218:25 247:16
183:18 210:25	398:2 399:12	299:5	249:12 259:25
deteriorated	399:14 400:3	disagree 116:19	286:7 290:15
170:20	400:12,12,21	disappear 341:19	316:10 331:5
determination	401:14 403:11	disavow 18:15	discussing 26:11
356:11	difference 96:6	disavowal 19:18	33:15 34:9
determine 367:25	different 21:13	65:22	249:9 290:17
determined 18:14	27:8 35:17	disavowed 18:2	317:3,7 366:12
92:23 136:22	46:23 61:15,19	disburse 74:16	376:20
136:23 182:21	61:21 66:5	disbursement	discussion 33:18
355:20	88:17 96:4,10	381:5,12,18,22	37:5 40:10,17
develop 116:8	124:24 174:8	383:11	41:2 77:16
developed 52:4	266:13 318:23	disbursements	106:13 118:10
114:11,21	322:2 373:4,5	374:5	129:6 131:25
116:9 117:3,5	373:10,19	discharge 240:23	140:7 147:13
122:11 162:20	374:19 375:2,5	390:22	160:9 165:24
171:4,19	377:18 382:21	disclose 377:21	186:4 187:20
262:18 263:25	401:16	disclosed 218:19	195:10 198:5
265:15 269:12	differently	378:6	204:20 206:23
370:3	96:10	disclosure	208:13 217:24
developing 21:25	difficult 257:22	147:20 161:22	226:3,23 227:4
46:15 55:15	dime 188:24	disclosures	230:2 237:18
147:8	dinner 54:11,18	147:3	238:14 243:6
development	dint 395:17	discourage	255:14 285:11
286:17	diplomatic 244:9	249:24	289:9 323:15
developments	direct 100:23	discouraged	327:2 332:14
79:23 364:18	178:14 186:7	388:15	337:20 367:15
didnt 38:10 39:3	195:9 198:4	discoverable	discussions
42:7 45:2	199:10,16	242:23	24:23 33:6
65:16,17 68:19	201:13 202:6	discovery 115:10	50:21,23 51:6
68:20 116:6	210:5 239:15	136:9 144:3	105:17 114:14
117:8 121:18	263:22 321:13	147:8 153:4	117:21 121:3,6
128:2 133:15	directed 187:16	171:4 260:18	121:10 122:23
148:5 152:2,11	300:9 342:17	269:12 272:5	124:11,12
165:18 168:13	directing 188:11	277:3 288:2	182:5 186:14
169:10,13	210:10 294:20	289:25	191:14 192:8
170:11 183:2	direction 62:24	discrete 266:8	196:21 200:10
185:20 187:22	172:15	discretion	206:13 211:23
188:22 200:6	directions	205:23	213:13 214:25
201:16,18	410:19	discretionary	230:20 238:16
226:13,16	directly 74:5,20	206:19	242:25 243:7
239:25 254:4	101:25 103:9	discuss 32:5	246:10 247:11
259:9 266:3,14	120:17,20	77:13 127:8	249:16 250:15
267:7,22	135:17 152:9	139:21 142:18	257:11 268:24
275:14 279:14	163:16 184:10	148:5 159:24	272:22 276:16
288:14 295:24	186:6 187:17	203:10,15	279:6 285:25
306:4 309:6	194:11,18	207:5 215:17	286:3 287:3
312:13 324:18	198:3,15 200:6	215:22,24	300:23 301:2
333:18 336:10	200:17,19	230:7 260:8	307:3 326:13
336:22 337:9	203:11,15	268:8,13 285:6	331:15,16
343:16 346:9	207:17 211:8	286:12 289:6	332:17 368:5
351:11 361:12	233:16 234:15	388:12 405:23	385:23
361:16 365:4	238:8 239:9,21	discussed 106:21	dishes 246:3

disillusionment	353:8,14	172:8 181:16	165:25 173:16
360:18 361:15	354:22,24	185:4 186:10	176:8 181:2,5
disk 87:5 177:7	355:3 356:20	188:19 191:25	184:8 185:3,6
258:22 330:24	356:23 357:24	204:7 210:13	195:20 198:4,8
dismissal 32:10	357:24 358:2,6	226:16 244:7	202:9 204:4
328:4	359:8 368:9	246:2 254:4	205:20 207:10
dismissed 134:9	380:8,17,19	264:5,12	208:11,14,19
326:10	382:10,11	267:15 268:4	210:6 214:7
dispute 36:16	392:20 394:3	280:9 281:11	216:4 218:14
353:9 376:6	395:6 410:15	282:25 286:10	218:17,19
disputes 36:18	documentary	289:13 294:5	227:22 233:15
distinction	341:12	298:11 303:3	238:15 239:12
152:12	documentation	311:18,20	239:20,25
distinguish	163:5 242:8	318:17 346:16	240:5 243:25
21:10 74:11	documented 95:12	364:22 375:12	246:11 247:13
111:23	documents 9:20	376:9 381:23	253:6 255:19
distractions	9:25 11:15,18	390:6 394:14	262:11 272:14
232:17	12:5,9,12,13	394:15 396:5	273:5 286:5
district 1:2,3	12:18,24 13:2	dollar 66:10,11	287:15 288:8
4:20,21 311:25	16:23 48:13,17	204:25 367:23	299:7 301:2,5
disturbing	66:22 67:2,8	dont 8:21 13:9	301:9 303:3,4
289:23	81:8,18,21,23	16:8,11 17:7	304:10,16
divide 162:25	82:7,11,17	20:14 26:3	307:25 310:13
divorce 234:8	83:23 84:18,19	28:2,7,12,14	316:9 317:2,7
docket 82:22	85:3,10,22	30:25 33:14,24	318:2,22 323:6
214:12	86:3,5,14 87:9	34:11 36:7	323:20 324:11
document 13:8	87:22 88:2,15	38:17,18,18,23	324:15 327:7
16:16,20 47:3	89:10,12,19	39:18 41:22	327:11 328:15
48:5,6,16	122:24 157:14	43:21 45:3	328:17 329:17
49:11 50:19	170:15 204:5	48:14 50:17	332:14 333:13
59:21 66:13	210:23 239:9	51:8 54:22	334:13,22
81:4,5,16	240:20 241:9	61:11 62:6	347:25 348:15
93:14 102:15	241:18 251:23	68:15 73:10	349:20 351:7
102:19 140:18	262:2 270:12	75:21 76:7	352:3 357:8,21
140:20 141:6	281:4 289:4	78:5 80:18	359:22 361:24
149:8,21 150:2	301:4 302:17	86:22 88:11,20	365:14 366:12
153:12 203:17	371:17 382:15	95:16,17 97:5	370:25 371:10
203:18 204:9	392:19 393:6	99:24 103:7	371:22 373:15
204:11 217:20	393:18 394:4	106:6,12 107:9	384:2 386:3
222:3 246:22	394:17 396:6	107:9 108:11	388:5,24
266:6 267:23	396:10,22	108:12 111:3	390:14 399:10
269:10 294:25	397:7,15,16,24	111:21 112:7	399:10,17
303:11 304:8	397:24 398:15	112:15,24	400:14 403:23
304:24 305:10	400:23 401:6	114:16 116:25	404:23 406:10
306:5,14 307:5	doesnt 82:19	119:20 120:2	408:6
307:6,12	172:14 324:14	132:14,21	donz 222:13
308:11,17,18	325:19 340:19	133:3,7 134:10	donz00014089
309:2,12 311:2	343:16 395:4	136:18 138:21	353:11
312:4 320:24	396:23	142:12 144:10	donz000140890...
321:19,20	doing 44:7 65:7	145:9 147:24	410:14
324:12,16,19	71:4 76:10	149:3 152:25	donz00026949
336:19,20	77:22 78:15	153:5,19,20,21	222:9
338:17 339:18	93:25 116:9	153:22 157:10	donz26949 222:9
345:3,11	119:14 128:21	160:10,20,24	222:16
348:19,22,25	129:3 164:17	164:3,19	donzhdd0046401

321:11
donziger 1:9
 4:19 5:20
 20:12,16,25
 21:6,22 25:13
 30:13 33:8
 35:19 41:23,23
 42:2,25 43:6
 43:19 44:2
 45:13,19,23
 46:11,14,21
 52:18,23 53:8
 54:16 55:18,23
 69:14 77:10,14
 77:19 78:2,17
 80:6,10,13,16
 80:23 91:22
 92:2,17,22,25
 93:6 94:10,11
 94:16,21,25
 95:5,22 96:4
 96:21 97:4,11
 97:16 105:25
 110:19 113:21
 114:6,8,10,18
 115:7,14 116:7
 116:13,25
 118:3,15
 119:14 120:12
 120:23 121:7
 121:13 122:3
 122:23 126:19
 127:8,19 128:6
 128:22,23
 129:10,21,25
 130:17 132:3
 132:20 133:11
 137:22,23,24
 139:14 140:3
 143:21 144:15
 145:9 157:16
 157:24 158:22
 159:7,9,20,23
 159:25 161:15
 161:18 162:5
 163:25 165:11
 165:13 166:21
 168:5 169:15
 170:8,12
 172:25 173:10
 174:3,18
 175:24 182:19
 183:11 184:9
 184:15,17
 185:19 188:2

191:6 195:2,8
 198:6,23 199:2
 199:8 200:7,15
 200:20 201:11
 202:6,18,21
 203:6,24
 205:17,18,22
 206:4 207:5,24
 208:10,14
 209:8,22 210:9
 213:2,9 215:4
 218:17 219:14
 225:13,21
 226:7,16 229:7
 230:18,22
 231:12 232:2
 232:13 233:3,6
 233:14,21
 234:12 238:6
 239:11,20
 240:7 241:6,17
 241:25 242:12
 242:18 243:3,9
 245:13,21
 246:5 249:21
 252:24 253:4
 253:14,22
 254:10 256:6
 257:20 259:24
 260:5,8,13
 261:2 268:3,8
 272:23 274:16
 275:24 276:11
 278:14 279:7
 282:4,11,21
 283:14 284:18
 284:23 285:9
 285:19 286:2
 287:2,8,9,15
 287:17,18,21
 288:11,19,24
 289:13 293:24
 294:10,19
 295:12 298:18
 299:8 303:7
 321:8 322:17
 326:14 332:9
 332:18,24
 334:17 335:5
 338:20 339:16
 341:11,23
 344:2,7 346:10
 347:2,6 350:9
 351:9,10
 352:23 353:23

354:9 355:4,9
 356:15,24
 357:6 358:9
 359:15 360:8
 360:11 364:17
 365:23 366:8
 367:3,15
 374:22 375:8
 375:22 376:14
 377:9,21 379:7
 379:14 381:22
 382:6 384:7,20
 385:23 387:23
 388:12,20
 389:7,11 391:3
 391:10 395:18
 412:4
donzigers 42:11
 43:14 54:21
 78:7 115:20
 118:18 119:18
 173:19 208:7
 236:12 238:18
 240:12 250:20
 286:9 358:2
 376:17
door 10:15 61:10
 61:12 250:25
doors 112:4,6
double 297:12
doubt 142:12
 259:14
doug 204:16
 225:4 267:23
downey 182:24
 183:8,19 184:2
 184:11 185:21
downeys 182:21
 183:14
download 236:15
downplay 229:15
dozen 61:15
dr 22:8 75:8,20
 75:24 80:20,23
 98:6,13 100:13
 101:10 102:17
 103:5,9,11
 106:13 107:21
 107:22 108:4
 118:14 245:20
 362:3 363:15
 370:5,7 388:14
draft 218:2
 222:21 247:4,9
 247:17 267:22

303:25 304:6
 365:24
drafted 261:21
 271:7 303:6
 342:22
drafters 303:8
drafting 106:3
 106:10 255:5
 261:23,25
 273:8 274:10
 280:2 367:10
drafts 266:21
 267:17
dragged 228:11
 231:17
dramatically
 322:2
draw 152:11
 187:3 265:10
 381:13
drawing 300:18
driven 288:24
dubois 87:19,24
due 180:2,22
duly 6:7 411:8
dunn 1:18 2:3,8
 4:16 5:7,10
 10:13 323:2
 405:21 406:17
dustup 201:8
duty 240:23

E

e 2:2,2,5 3:2,2
 6:5 177:2,2,4
 410:2,6
earlier 61:24
 68:17 92:12
 107:11 122:12
 140:8 178:13
 187:20 215:4
 215:16 230:22
 247:11 258:7
 273:17 276:6
 276:12 289:16
 292:4 293:23
 296:2,14
 314:19 343:5
 346:24 355:4
 365:22 368:22
 370:8 389:6
earliest 37:20
early 29:9 34:16
 35:15 37:22
 44:12 45:15,17

60:2 74:18	185:12 195:3	233:14 234:16	116:18 137:5,7
76:9 93:9	197:4 211:21	241:11 245:9	137:18 138:16
118:23 178:23	212:5,19	248:16 260:2	141:20 143:8
249:17 275:5	213:17 215:17	260:10,14	148:2,8,13,22
318:24 350:19	216:22 219:5	262:25 265:25	167:12 171:25
358:9	219:11 232:7	273:10 276:21	180:17 182:2
earned 364:11	233:24 239:10	280:21 298:5,6	202:5 214:9
ease 74:15	243:12 260:16	299:21 305:17	217:19 232:6
easier 374:10	261:4,5 278:9	305:19 312:25	245:15 265:20
easy 10:14	292:9,13 298:9	326:6 332:10	268:25 273:6
ecologica 334:6	299:5 300:4,7	ecuadorians	273:13 287:11
economic 17:23	301:18 305:21	333:25	296:7 302:22
18:2	306:8,16,24	ecuadorrelated	305:20 314:24
economou 155:21	307:8,17	48:23 71:7	317:10 332:22
155:24	311:16 312:20	92:3 319:10	344:22 349:21
ecuador 11:15	312:23 313:10	edelman 322:4,25	350:21 373:25
19:21 21:6,12	313:16,22	edison 58:8	378:25 387:8
23:4,21 26:17	314:16 315:5	editing 42:18	399:4
27:11,12 28:5	316:3,4,15,24	editor 226:17	electronic 11:14
28:8,9,23 29:8	317:10,12	educate 245:9	11:17 309:23
30:12 31:16	318:11,18	256:20	elevator 165:10
33:3,5,11,23	327:3 331:18	effect 20:9,11	165:11
35:9,25 36:21	333:12,17	31:20 68:12	elicit 404:14
39:16,22 40:13	334:25 335:6	121:14 128:2	elliptically
40:22 41:5,16	335:19 339:21	143:11 173:10	122:7
41:18 42:12	340:7 342:14	300:5 342:5	elses 265:21
43:6,7,15,21	342:22 343:10	388:3	ema 105:3
44:6,17 53:7	344:4 345:12	effective 196:15	email 10:7,9,17
53:22 56:16	346:14,23	254:7	10:18,21 11:6
59:16 70:22	347:8,19 348:8	effectively	13:5 49:25
72:10 76:6,13	350:4,17 351:4	240:23 407:10	51:13 95:21
76:23 77:5	351:25 353:10	effectiveness	96:3,12,25
79:21 80:6	358:12 360:4	335:12	149:12 150:17
93:3 95:7	365:8 366:10	efficiently	150:24 151:2
97:13 98:3,17	366:16,18	371:7 407:10	151:18 152:19
98:19,20	369:16 380:21	effigies 112:13	154:2,9 155:13
101:16 102:5,9	388:19 389:15	112:25	163:13 203:19
104:5,24	ecuadorian 6:24	effort 36:14	205:17 206:15
105:21 106:3,9	22:6 26:25	111:8 123:12	207:3 223:19
106:25 107:7	27:6 40:21	210:24 217:22	233:6,20
107:25 109:7	53:25 58:11	229:14 312:2	239:19 240:5
109:12,17,17	59:9,12 60:13	efforts 245:14	256:11 321:7
109:22 113:4	97:23 103:12	256:10 288:25	321:15 323:9
115:2 116:10	105:4,7 108:4	289:5 290:21	324:12,14,14
123:5,15	115:12 118:13	355:22 364:10	348:20 349:5,9
125:21 126:20	118:17,22	effusive 381:19	374:22,24
128:9 134:18	120:10,21	egotistical	375:7 376:12
134:22 136:19	121:24 125:3	234:21 237:12	376:13 377:11
144:7 147:14	140:14 144:19	eight 63:8 109:3	396:18
151:5 154:25	145:11 148:20	109:3 213:5	emails 135:8
158:15 175:16	154:21 163:4	either 16:2 23:7	194:9 203:20
175:25 177:14	166:19 175:17	25:2 42:17	207:10 210:22
177:25 179:17	180:2 187:12	65:21 74:23	211:7 232:23
179:22 180:13	214:16 230:7	80:12,22 88:8	233:10,15
180:23 181:8	231:10 233:9	88:9 109:8	271:23 282:20

320:7
embarrass 167:4
embarrassing
 163:7 167:2
 244:22 277:14
emergency 229:17
 370:22
emery 162:7
employed 31:5
enacted 107:12
enactment 106:4
 106:10
ended 165:5
 244:10 357:15
enforceable
 199:24
enforcement
 212:9 246:15
 281:9
engage 90:18
 205:19 238:8
 302:8
engaged 44:5,17
 55:14 70:5
 78:4 169:17
 187:9 190:2
 245:6
engagement 55:20
 187:17 390:9
engineer 38:15
 58:11
engineering
 38:19,22 73:10
 187:9
engineers 74:21
 187:8
english 16:22
 22:16,21,25
 118:6 132:23
 132:24 233:13
 270:5,12,18,24
 271:12,20
 272:7 309:4,14
 309:16 310:7
 310:10 353:13
 353:17 359:10
enjoin 32:11
enlisting 350:17
enormous 240:18
enter 34:5
 198:23 199:2
 355:11
entered 35:23
 90:19 99:22
 306:7,9 331:21

354:9 383:4,14
 384:18 392:17
entering 34:12
 161:19 363:17
entire 192:14
 335:25
entirely 80:15
 250:15 374:2
entirety 157:8
 209:2
entities 182:8
 384:21
entitled 217:7
 221:5 259:10
 304:25 353:8
 356:17 368:10
 380:11 410:15
entity 28:9
 58:19 60:10,13
 102:22 103:19
 180:3 226:19
 306:12 335:17
 368:24
entry 52:10
 56:23,25 67:20
 73:2 75:4
 91:21,23
environment
 39:16
environmental
 15:10,16,18
 16:2 35:9
 38:22 43:2
 56:5,15,22
 58:2,7 104:12
 105:3,16,22
 106:4,11 125:7
 261:3 297:20
 297:22 298:6
 334:6 352:24
epidemiological
 75:11,13
equal 162:8
 190:22
equipment 78:16
 370:24
equivalent
 138:23
eric 28:18 35:22
 36:9
errata 412:1
escalate 231:2
escalation
 229:22
escapes 215:21

especially 108:7
esq 2:5,10,16
 3:6,7,12,13,15
essentially
 52:23 111:10
 168:3 341:3
 355:3 369:15
 375:8
estimate 350:15
et 1:9 4:19
eternal 255:10
ethical 172:19
 173:20 187:23
 189:18 200:16
 200:22
event 141:20
 221:3 270:4
 391:15 400:5
 401:9
events 72:18
 112:22 122:15
 124:15 170:14
 238:22 241:21
 255:15 390:24
eventually
 181:17 270:24
 282:19
everybody 404:12
everybodys
 245:19
evidence 262:18
 263:25 265:9
 280:23
evidencing 47:8
evidentiary
 34:19
evolve 116:5
evolved 247:10
 370:16
exact 111:4
 173:8 347:24
 355:19
exactly 67:10
 90:3 134:17
 146:13 221:5
 272:9 282:24
 344:13 345:7
 393:21 397:17
 398:16
exaggeration
 228:17
examination 6:9
 177:8 327:20
 405:12 410:3
examine 67:13

399:22
examined 6:7
examining 67:9
example 55:14
 110:8 230:6
 259:15 267:2
 301:17 379:11
 395:14
examples 124:20
 391:2
excepting 46:9
exception 327:21
 374:8
excess 275:8
exchange 49:25
 51:13 93:11
 96:12 144:9
 190:6 203:19
 203:21 254:25
 282:20 302:15
 303:21 307:16
 310:24 311:13
 311:17
exchanges 203:23
 207:4 406:21
exclusive 205:23
 408:12
exclusively
 80:16 195:7
 312:22
excuse 19:15
 44:25 60:17
 63:11 80:25
 89:25 146:10
 157:22 164:24
 193:3 219:23
 251:5 253:15
 271:8 293:18
 303:24 304:7
 304:17 318:2
 321:16 397:9
 398:4 399:2,10
excuses 132:19
executed 305:2
 308:20 313:8
 336:7
execution 90:21
 90:21
executive 110:8
 270:18,25
 359:2 410:15
executives
 178:15 300:11
 302:7
exercise 254:8

exercised 70:6
exercising 124:2
exerted 44:15
exhibit 9:6,11
 13:11,11,13,20
 16:17 17:7,8
 17:12,16 19:20
 22:22 47:3
 48:2,6,11,14
 48:19,21 49:24
 50:9,15 51:20
 63:16 67:19
 70:15 72:2
 73:2 89:24
 91:16,17 92:15
 94:14,19 95:20
 96:18,20
 140:19,22,25
 141:20 142:7
 149:9,10,24
 150:5 154:3
 155:13 203:18
 203:25 204:13
 207:4 217:16
 221:25 222:2
 222:22 224:8
 227:24 240:16
 240:17 246:22
 246:25 247:3
 247:18 283:18
 284:2 288:21
 303:12,22
 304:24 305:6
 314:12 316:7
 320:25 321:22
 322:6,7,9,11
 322:11,20
 324:9 334:25
 338:14,15
 348:22,23
 349:2 350:14
 353:8,15 354:5
 356:14 358:25
 359:5,7 368:6
 369:5,9 380:9
 380:14,16
 382:10 410:8,8
 410:8,9,10,10
 410:11,11,12
 410:13,14,14
 410:15,17,17
exhibits 72:14
 72:15 323:17
 370:8
expect 165:18

402:13
expectation 7:6
expected 192:15
 211:2
expedition 79:2
expended 51:5
 225:2
expenditure
 111:8
expenditures
 11:21 217:18
expense 51:13
 95:3 97:17
 217:21 373:17
 376:17 382:22
 383:2,4,19
 384:4
expenses 18:12
 48:8,22 56:5
 65:20,22 66:7
 67:24 69:3
 70:16 71:16
 74:9 92:7,8,18
 95:11 204:22
 216:2 225:6
 238:2 293:11
 368:11 369:13
 369:15 370:10
 373:17 374:3,5
 380:20 382:4,5
 383:24
experience 16:2
 16:6 42:12,17
 42:20 43:2
 55:21 219:13
 346:11 365:19
 383:16
experienced
 26:20 55:12
 171:24
experiencing
 230:16
expert 98:7
 126:22 128:12
 144:9,12
 148:23,23
 151:11 152:8,9
 154:22 260:3
 260:11 261:16
 261:20 262:11
 263:11 264:9
 265:2,7 279:2
 281:10 291:9
 291:17 296:6
 296:23 391:23

expertise 14:25
 15:4 126:21
 255:3
experts 57:11
 67:25 248:17
 249:2 268:25
 290:15 296:4
expired 191:2
expires 412:25
explain 66:14
 78:17 143:23
 153:10 235:15
 236:20 282:16
 308:11
explained 55:19
 103:5,8,12
 114:12 262:8
 262:14 263:2
 387:21
explaining
 174:19
explanation
 128:17 132:7
 234:13 321:3
 341:24 373:8
 374:13,17,21
explication
 155:9
exploration
 24:13
explore 367:4
explored 290:15
explosion 366:24
express 5:21
 231:15 337:14
expressed 127:14
 204:20 243:17
expressing
 325:14
expression
 160:24
extant 316:17
extent 16:23
 38:21 40:3
 71:18 77:25
 81:8 120:7
 154:13 171:3
 213:22 272:24
 274:17 289:25
 292:14 381:21
 389:7,11,22,24
extraordinary
 224:25
extremely 220:4
eye 166:3

F
f 177:2
face 219:20
 220:3 345:4
 365:8
facilitate 110:4
 110:6 178:18
 187:12 243:16
 278:11 333:8
 336:15 344:9
 344:17
fact 18:24 59:23
 131:19 171:10
 173:17 181:16
 183:4 184:12
 192:24 211:4,5
 212:11 217:6
 259:11 274:2
 285:25 316:14
 318:7,9 345:23
 356:15 366:16
 367:3 396:17
 400:19
factory 366:24
facts 143:2
 242:5 249:19
 265:15 367:11
 389:20
fair 71:23 84:21
 84:25 86:12
 192:13 200:23
 201:10 339:19
 365:13
fairly 42:21
 44:12 111:3
 165:20 181:18
 206:21 216:24
 256:22 286:16
 406:5
fait 360:17
faith 161:10
 392:24
fajardo 24:16
 25:11 47:16
 55:13 108:10
 108:12,13,15
 114:15 132:3
 132:21 133:2
 135:17 136:5
 138:5 139:9
 142:3,17 145:8
 145:13 146:14
 147:12 148:2,8
 148:14 149:13

150:6,18 151:2	213:8 255:15	214:4 261:19	finding 180:21
151:18 152:17	285:5 303:15	265:4,24 266:9	180:24
153:17,18	357:15 359:4	266:12 269:13	findings 367:11
154:2 155:12	fee 18:9 91:22	269:16,20	fine 149:6 324:3
155:18 156:3	92:13 94:12	270:3 272:21	324:6 330:18
156:12 157:3	162:8,9 193:8	273:10,13	331:8
157:17 174:15	194:4,7,17	274:18 279:20	finish 26:4
195:3,10	197:12,16,19	291:15 303:2	finished 321:17
211:24 213:3	197:21 198:24	315:3,12	fire 201:9
222:5,12,19	199:3 218:10	354:23 385:3	fired 359:16
223:12 232:19	237:16 354:8	files 10:3 12:10	360:23,23,24
284:12 287:6	356:18 358:12	12:14,15 37:8	363:23 388:20
293:3,15 327:4	382:2	141:8 236:15	388:25 389:12
327:25 347:18	feel 121:21	252:3,17	firing 359:9
348:7 363:11	206:21 244:24	filing 43:22	361:11 389:17
364:6,22,25	289:18	98:18 99:14	390:23
365:7	feeling 224:10	181:19 266:5	firm 9:22 10:8
fajardos 55:22	fees 65:22 92:6	273:20 305:16	10:12,21 11:6
144:6	92:17,23 94:16	316:2 333:11	12:20 14:11,13
fall 18:6 25:14	95:2 97:12	350:19 385:6	14:18 15:9,15
54:10 61:6	168:6 190:23	film 111:14,23	17:22 18:7,11
63:14 140:11	194:12 199:15	111:25 112:3,7	18:13,20,23
229:12 278:23	225:6 355:16	174:2,13	19:7 20:5,7,17
286:20	379:10 383:23	326:25 332:23	20:19,21 26:9
false 76:14	feince 354:10	339:2 340:13	30:3,15,20,22
175:2 276:3,18	fell 266:16	340:14,19,22	30:24 31:6
276:23 285:20	fellow 30:2	347:17	42:23 46:4,6,8
285:20,22	felt 171:2,7	filming 341:16	46:20 50:6,12
294:15 379:15	186:24 227:3	filmmaker 260:19	51:13 52:7
379:21 384:9	275:12 288:10	final 80:3 98:25	53:24 55:10
falsity 175:21	fernando 73:3	99:5 100:10	65:19 70:18,22
343:7	260:9	230:8 245:12	71:8,12,25
familial 38:6	fess 292:7	261:11 263:10	72:10 95:6,7
familiar 8:11,14	field 53:14	263:15,16	96:14 97:18
56:6,11 60:7	128:21	280:18,22,24	98:14 100:22
105:2 351:19	fields 318:21	286:15 290:18	100:23 102:14
351:22	fieldwork 129:3	295:18,22	116:11 127:23
far 39:2 49:7	figure 199:13	301:21 359:23	135:9 136:4
89:18 123:13	figures 264:3	362:18,18	138:15 139:22
187:6 266:6	file 75:16 145:9	365:25 366:4	140:9,10,15
269:3 319:25	152:6 168:9	finality 255:17	141:7 143:15
353:4 368:21	173:19 182:16	286:19	147:4 155:16
397:22 401:2	264:21,21	finalized 34:14	155:19 158:14
fast 404:25	324:18	finally 233:5	161:5 162:7,11
father 14:15,17	filed 4:20 16:19	236:3 278:12	162:18 164:10
38:7	17:15 19:21	278:21,25	164:11,19
favorable 277:18	22:2,23 23:2	282:22 289:23	167:9,10,22
favorites 121:22	27:13 37:21	343:10	168:5 169:3
fda 58:18 59:7	41:9 43:13,18	finance 71:21	181:12 182:17
102:22 103:2	47:11 59:21	financial 36:20	182:21 183:22
108:19 354:10	60:5 102:9	financing 116:14	184:20,23
feature 235:20	128:9,11	find 78:24 82:6	185:11,15,16
february 130:11	134:20 144:15	132:14 163:11	188:17 193:10
130:22,23	157:21 168:4	163:13 221:5	193:24 197:9
157:24 167:21	168:15 213:20	302:9 371:18	197:23 202:10

207:19 209:6	214:15 217:8	followed 90:17	311:2,20 312:4
210:23 214:15	222:4 224:8,11	223:23	316:6 326:11
214:17,19	228:18 242:11	following 87:17	376:12 380:20
215:5,8,13,25	247:9 248:3	87:19,23 90:4	411:8
216:10,14,24	260:23 261:18	104:24 204:18	forum 98:8
218:17 219:14	263:6,14	238:17 276:15	100:10 105:14
225:16 229:2	265:18 269:25	follows 6:8	106:19 246:18
229:13 231:8	277:6 279:25	161:9 295:13	forward 41:12
231:25 234:25	283:18,25	followup 207:10	51:7 53:8 55:5
237:25 238:7	284:7,14	207:13 210:14	80:4 93:4
240:10 242:3,4	288:21 296:12	223:20 268:24	114:22 139:22
244:18 247:4	304:3 311:20	282:10 377:13	139:25 143:14
247:19 251:11	319:15 323:25	food 369:17	189:15 224:12
251:12,17	325:18 337:8	forbid 236:5	249:24 254:9
252:12,17	337:22 341:9	foreign 182:7,8	288:2,16
257:18 271:18	341:23 346:24	182:10,12	292:11 320:3
271:18 281:10	350:13 360:20	foreigner 183:7	390:14
287:8 288:15	362:4 364:19	foreman 216:7	forwarded 149:15
289:3,24 290:2	368:4 369:13	foresee 212:10	189:7 190:17
293:10,16	373:14 374:14	forever 300:21	247:14
337:14 355:2,2	376:4 389:17	forged 102:19	forwarding
355:5,12 357:4	395:7 400:8	forget 186:17	342:14
357:5,7 373:18	403:15	191:18	forwards 149:17
373:20 374:4	firstname 172:5	forgot 165:20	149:19
384:20 386:2	firstperson	form 17:16 18:17	found 132:9
387:3,18,22	269:10	50:13 93:15	146:10 269:11
405:21	fishing 79:2	94:12 119:9	335:21
firms 42:23	fit 56:9 82:20	123:19,20	four 23:7,10
50:22,24 53:12	five 25:10 63:3	150:8,11	25:9 63:3
139:15 141:8	226:11 227:12	214:10 247:10	109:8 130:9
161:2,16,20	229:18 245:25	266:11 269:23	227:12 229:18
171:12 187:9	303:18 330:4	273:3 371:5	231:24 235:13
211:15 224:24	330:24	407:16 408:14	236:18 258:22
225:7 228:21	flailing 288:6	forma 380:11	399:25
252:2 253:2	floor 10:14	formal 34:6,7	fourpage 140:19
287:12 291:22	62:20,20	60:4 93:11	fourth 249:3
381:4 382:13	fluent 255:25	134:21 202:16	400:4
383:21 384:4	fluently 138:18	202:16 217:25	frame 20:24
406:24	focus 187:22	formality 60:6	37:10 63:12
first 6:6 16:20	278:2	363:16	80:12 82:20
26:7 43:23,24	focused 236:23	formally 18:15	130:10 135:7,7
48:20 49:15	300:3,6 335:9	format 51:10	142:5 156:16
50:8,15 51:20	346:17	281:14	231:10 239:8
72:20 74:7	focusing 41:12	formed 53:2	261:6 266:24
79:25 83:10	48:20 147:21	58:25 59:18	268:18 290:17
85:7 87:14	277:21 317:8	former 7:5 14:21	315:2
91:20 97:7	folks 101:12	84:15,16 97:22	frames 228:19
113:24 129:20	109:25 115:12	146:22,24	francis 83:6,13
130:11,15,18	119:8 136:10	147:9 173:11	frankly 281:19
143:18 162:23	140:14 269:12	186:8	397:8
163:22 175:5	341:12	formerly 6:23	fraud 146:10,11
186:16 189:25	follow 18:21	formidable	218:25 219:22
190:25 191:9	162:25 177:10	171:23	253:25 257:7
197:5 201:25	233:19 238:9	forth 163:14	327:24 328:9
203:20 209:4	244:15 246:9	229:4 269:6	331:24 333:4

336:6 339:24
 345:10,14
 346:22 386:11
fraudulent
 386:22,23
freestanding
 62:9,13 266:12
fremlin 203:22
 205:7
fremlins 205:16
french 22:17
 138:24
frente 58:15,20
 60:9,18 61:8
 61:14 62:2,4
 62:12 63:7,22
 64:9,10 65:5
 73:19 74:5,13
 74:24 75:3,23
 104:8,10,15
 109:21 114:4
 123:24 125:14
 125:15,16
 182:3 183:17
 185:18,22
fresh 227:22
friend 186:15
 198:21 349:12
friendly 230:23
friendship
 121:16
front 17:6 61:10
 61:12 91:16
 315:19
fruitless 250:21
frustrated
 212:21 290:20
frustration
 227:9 229:24
 243:18
ftp 82:23 88:3,9
 88:14,19 89:5
 89:6
fuel 201:9
fulfilled 336:6
full 6:12 30:17
 89:14,17 90:14
 135:11 143:24
 147:19 161:22
 171:3 227:23
 292:14 370:20
fulltime 46:11
 93:22 111:10
fully 290:14
function 165:6

231:7 238:4
functioning
 74:11,12 299:3
fund 75:20,23
 95:15 116:20
 160:22 293:17
 294:3,6 297:25
 351:23
fundamental
 228:20 367:14
funder 217:6
funding 74:7
 216:23 226:8
 226:20 282:3
 369:22 391:7
funds 71:22
 115:3 126:15
 194:14 204:21
 217:8 225:16
 225:23 227:7
 256:12 384:9
funny 185:9
further 70:15
 140:7 153:11
 155:7,9,15
 183:25 205:21
 208:13 242:24
 246:9 247:12
 280:12 292:21
 304:22 330:11
 350:11 377:20
 387:11 407:7
 411:12
furtherance
 146:9,11
 219:21 386:10
future 312:16
 388:2
fuzzy 296:24

G

g 48:8
gallery 72:14
gap 371:15
garr 67:16 159:8
 159:20 165:11
 167:5 169:15
 232:2 393:19
 394:6 395:2
 397:7
gas 16:14
gather 208:25
 260:19
gathered 406:9
gathering 110:4

263:12
geared 21:6
general 8:13,16
 14:22 39:22
 50:21 55:12
 67:23 74:3
 99:25 105:11
 107:18 112:9
 114:3 124:22
 133:18 134:25
 154:20 175:14
 198:11 207:18
 314:15 326:8
 326:12 327:3
 331:19 333:15
 334:20,21
 337:5 339:21
 340:7 342:6,8
 342:17,20,21
 343:10 344:4
 345:11 346:14
 347:4,8,18
 348:8 366:2,6
generally 17:5
 79:24 269:24
 300:6 373:6,7
generals 28:8
 342:15
generated 49:11
genocide 350:21
gentleman 35:22
 159:14 186:18
 188:22 233:11
 256:13 257:16
 314:18 351:13
gentlemans
 215:21 257:20
gentlemen 138:16
gerardo 2:15
getting 21:5
 30:5 81:5
 101:9 105:8
 114:2 122:8
 153:19 167:22
 169:7 170:5
 171:6 196:4
 212:20 227:17
 244:15 257:19
 258:13 300:19
 301:25 343:12
 387:24
ghostwriting
 269:9 280:3,6
 283:10 286:13
 286:16 294:2

gibson 1:17 2:3
 2:8 4:16 5:7
 5:10 10:13
 323:2 405:21
 406:17,22
 407:11 408:17
gibsondunn 2:5
 2:10
gidi 245:7,20,20
 254:15,16,18
 254:19 255:25
 256:5,7,19
 367:5
gitter 3:12 5:15
 87:7 193:14
 258:24 408:23
gitters 7:16
give 8:23 21:20
 94:24 97:9
 153:2 154:18
 161:21 231:12
 234:12 244:20
 338:11 379:20
 380:7 399:24
given 106:18
 122:5 176:2
 284:23 296:17
 296:18 340:6
 363:9 373:8
 374:17 381:17
 411:10
giving 57:18
 121:3,6 311:14
 311:15
glad 278:25
glancing 337:7
glazer 30:14,18
 31:2,5,8
 138:14,22
 141:10,17
 149:20 182:15
 214:9 230:13
 233:10 234:7
 236:11 239:14
 239:14,22
 240:8
glazers 30:17
 141:12
glimmer 337:18
global 25:20
 56:5,21 57:11
 57:12,25 58:7
 260:2,11
 261:16,20
 266:22 273:11

go 4:10 8:19
 34:25 56:22
 57:20 64:3
 68:20 104:14
 116:17 162:14
 164:20 165:5
 175:9 185:2
 190:24 206:15
 211:9 232:3
 233:18 234:5
 236:7,11 243:3
 290:7 292:25
 301:24 302:5
 317:25 323:11
 324:6,7 328:11
 329:9,20 330:9
 332:12,15,19
 336:8 339:14
 340:14 341:7
 343:25 344:14
 345:13 348:17
 364:3 367:24
 373:9 374:18
 380:23 387:11
 390:6 394:16
 397:11,18
 401:5
godfrey 140:9
 158:8,13,25
goes 108:15
 191:24 248:11
 343:4
going 9:5 13:10
 21:10 25:20
 26:5 35:3 51:6
 51:7 62:23
 66:22,24 81:25
 84:22 86:24
 107:17 114:23
 116:7 119:23
 132:13,14,18
 134:17 139:21
 139:24 140:18
 143:12,25
 144:5,23 149:7
 149:8 162:3
 163:12,13,24
 164:6,12
 165:14 170:6
 174:19,20,21
 174:23 175:8
 176:10 179:5
 189:14 198:24
 203:16 206:20
 219:20 220:21

221:13,24
 226:9 230:3
 232:7 234:7
 235:2,9 237:20
 239:24 243:10
 244:5,5,8
 246:14,21,22
 249:24 250:24
 257:21 258:17
 260:15 261:4
 266:5 277:2,13
 277:14 282:25
 287:25 291:23
 294:18 303:10
 303:11 304:23
 308:6 311:9
 321:13 329:4
 330:9,19 331:4
 333:8 334:24
 336:15 337:9
 337:11,22,24
 337:25 338:2,4
 338:8,11,14
 339:10 340:12
 341:13 344:9
 344:17 346:19
 346:20 347:11
 348:18 353:7
 358:24 360:23
 362:17,24
 364:2,3 368:8
 368:9 373:25
 380:7,8 386:20
 394:12,16
 396:20,21
 402:7,14
 403:19 404:25
 405:2,7 408:25
gomez 2:13,16
 5:17,17,17 7:8
 7:12,14,20
 63:11 123:19
 124:17 127:3
 144:22 145:14
 146:4 150:8,11
 156:15,22
 160:3,8,14
 164:24 192:18
 219:17,23
 220:3,17
 251:20 253:15
 258:24 273:3
 293:18 303:13
 304:7 307:23
 308:3,16,23

309:6 310:17
 310:18,20
 311:6 314:5
 315:13 316:8
 317:17 318:2
 319:12 321:3,5
 321:21 323:24
 325:16 326:18
 326:21 327:13
 327:16 329:13
 329:18 331:3
 331:10,11
 339:10 340:8
 340:16,20,21
 341:4 343:23
 345:17 347:9
 353:25 359:17
 361:2 368:16
 373:12 379:16
 386:5 389:19
 389:25 391:24
 392:5,10,13,16
 393:17 396:8
 398:8 401:12
 402:5,17,23
 403:22 404:9
 404:22 405:3
 405:12 410:5
good 6:10,11
 22:18 38:2
 118:9 161:10
 201:7 232:14
 235:3 236:19
 242:13,19
 249:22 250:3
 256:12 383:7
 392:24 404:3,6
goodbye 165:8
 205:24
gossip 360:15
gotten 227:16
 278:14 279:2
 288:12
gov 339:20
government 27:6
 124:24 177:19
 179:12 180:18
 182:11 187:13
 248:9,17 249:2
 278:8,13,15
 311:16 331:22
 335:17,19
 345:2 346:3,12
grace 203:22
 205:7

grad 365:5
gradual 229:11
gradually 362:8
graduate 14:7
graduated 14:2
 365:2
graduating 14:9
graf 9:21,23
 10:3,6 11:13
 11:19 12:14
 14:10,15 17:23
 19:22 31:9,12
 43:8 44:19
 45:11,18 46:20
 48:22 52:4
 63:21 69:20
 71:9,11,14,17
 71:19 74:4
 92:4,16 94:15
 94:20,24 96:14
 96:22 97:12,17
 110:11 113:13
 115:21 119:17
 122:4 123:15
 125:23 126:11
 146:19 158:12
 179:8 181:22
 182:23 210:16
 234:14 239:7
 241:8,10,12,18
 250:9 253:22
 258:3 262:19
 297:25 298:7
 299:16 351:23
 367:9 369:2,14
 372:19 378:3
 380:17 381:2
 382:12 383:18
 387:2
grafs 12:10
grasping 285:13
great 91:6
 144:15 242:13
 343:9 364:22
 383:21
greatest 395:19
greet 174:23
ground 281:18
group 6:24 19:9
 19:12,17 21:14
 40:12,14 59:15
 59:19 89:10
 100:25 186:21
 193:12,16
 194:20 195:6

284:12 288:8
 302:23 334:4,7
 338:3 345:6,23
 351:9 358:11
groups 18:22
 47:17 58:22
 101:20 125:17
 125:17 334:6
 352:24
guess 28:19
 36:13 52:21
 113:22 124:3
 124:22 165:23
 220:9 267:19
 281:16 313:20
 342:2 371:7
 389:4
guessing 8:19
guesstimate
 197:7
guesstimates
 275:19
guided 7:17
guilty 350:20
gulf 35:11
gus 102:17
guts 345:3
guy 38:9 155:20
 170:4 172:6
 174:22 188:22
 235:23
guys 174:21
 175:9 235:5
 236:23 244:17

H

h 6:5,5 177:4,4
 410:6
h5 155:24
ha 128:13,13
hadnt 218:18
 286:22 344:23
haec 220:12
 221:8
haggling 279:5
hague 350:20
half 16:20 139:5
 220:10 277:25
halfway 52:11
hallway 62:21
 165:9
halt 281:18
hamill 3:6 5:25
 5:25 6:15,19
 12:23 17:2

57:20 81:14,20
 81:24 84:23,25
 85:15,18,24
 86:8,16,21
 87:6,11 88:11
 88:16,20 89:2
 89:13 90:6,10
 91:3 95:4
 150:12 254:19
 269:22 279:22
 293:20 294:22
 297:9 304:13
 305:24 309:10
 309:25 310:11
 310:14 316:19
 317:21 353:17
 374:15 387:14
 402:10 404:18
 405:4,22
 406:14 407:15
 408:3
hand 16:16 82:2
 84:22 141:15
 149:7 203:16
 221:24 304:23
 320:23 348:18
 360:7,9,9
 368:8 411:17
handed 48:4
 276:21 344:24
handful 101:20
handle 195:25
 230:10
handled 12:19
 196:7 296:5
 375:10
hands 231:15
handwriting
 141:21,23
handwritten
 49:14 95:25
 97:2 141:4
hang 317:21
happen 144:2
 211:5 277:2
 337:9 361:16
 388:2
happened 100:7
 100:21 107:11
 143:24 168:23
 210:7 285:10
happening 100:7
 213:17 282:6
 360:16
happens 185:25

329:8 346:11
happy 188:21
hard 11:14,18
 223:19 304:19
 364:23
harken 251:6
harkens 181:4
harmful 78:18
harold 14:17
havent 17:15
 144:14 227:15
 321:17 394:22
havoc 77:4,8,12
 79:16
head 160:23
 288:13 299:6
 308:12 318:24
 337:17 338:9
 352:4
headed 139:19
header 48:7,24
heads 238:22
 361:17
health 75:14
hear 70:11
 145:17 160:17
 165:18,19
 219:22 230:24
 246:3 278:25
 308:9 319:15
 320:11 386:8,9
 386:14 387:10
 401:14
heard 45:5 70:13
 165:17 191:9
 202:5 214:20
 217:23 278:13
 296:22 360:16
 360:20 364:20
 401:17
hearing 29:10,12
 34:20 83:19,25
 84:7,20 87:17
 87:19 160:16
 243:5 351:12
hearings 39:24
 101:22
heft 187:2
 196:19
held 1:17 4:15
 31:21 110:9
 313:22
hello 118:9
help 212:18
 230:12 393:16

398:13
helped 110:4,6
helpful 186:24
 246:13
helping 173:12
heres 271:24
hereunto 411:16
herrera 27:21,25
 28:15
hid 293:25
hidden 343:3
hide 290:10
high 138:23,24
higher 55:21
 191:20
highlighted
 301:4
highly 163:11
hillwig 30:14,18
 30:23 31:11
 138:14 149:19
 172:23 214:9
 230:13 234:6
 236:11 350:10
hillwigs 30:16
hilwig 141:10
hilwigs 141:14
hindsight 148:18
 236:7 237:2
 293:8 379:20
hinton 66:4
 195:23 200:5,6
 201:22 202:2,8
 202:22 203:7
 203:11 205:8
 205:12,24
 206:6 207:6,17
 208:11,21,21
 209:18,18,21
 210:12 226:14
 256:16
hintonissued
 210:18
hintons 182:24
 202:12 209:9
hire 187:8
 250:10
hired 97:25
 254:11 262:19
 350:3,4,6
 389:12
hiring 253:23
 262:24 389:17
history 41:11
 51:3 188:13

211:7 217:18	350:11 351:12	246:21,22	393:10 395:13
231:6 232:16	identical 222:15	247:9,25 248:3	400:15
240:11 320:6	identification	255:2 258:13	improper 134:3
356:11	9:12 12:4	259:10 276:25	134:23 233:17
hit 324:20	13:14 48:3	279:23 293:10	244:23 248:14
hodgepodge	140:23 149:11	294:18,23	284:24 286:14
282:18	204:2 247:2	298:11 300:12	290:12
hold 157:7	303:23 338:16	303:10,11	improprieties
245:23 315:9	348:24 353:16	304:23 306:9	247:22
holds 113:17	359:6 368:7	308:23 309:6	inability 230:6
holocaustera	380:15	310:20,21	239:4 249:14
15:14	identified 6:24	316:20 318:13	249:19
home 62:9 226:4	30:13 89:19	321:13,17	inadequate
227:5 275:20	96:8 314:16	322:23 324:12	122:13
honest 289:12	identify 4:25	326:8 338:11	inadvertently
380:2	204:5	338:13 341:20	83:2 323:18
honestly 164:11	ill 165:16	341:22,25	inappropriate
honor 86:21	232:14 233:24	342:10,11	246:8
87:11 88:17	236:24	343:11 345:16	inappropriately
315:16 320:19	im 6:18 8:14 9:5	345:21 347:11	135:20
387:2 396:8	9:7 13:10	348:18 352:21	inbetween 36:4
398:8 399:17	21:10,16,17	353:4,7,25	incident 248:7
404:23	22:18 24:7	358:24 360:10	include 190:11
hotel 54:14	26:5,6 27:23	363:15 365:3	245:3 249:4
hour 139:5 159:5	33:8 39:4	368:8,9 376:5	258:9 263:17
159:18,19	41:20 44:22	376:11 377:14	included 17:6
330:6 406:10	45:25 46:2	380:7,8 387:5	125:16 130:20
hours 32:2	49:10 60:6	389:3 395:25	222:22 232:5
244:14 303:18	62:10 63:17	397:22 403:19	263:11 271:7
330:4 368:20	64:6 67:5 71:3	406:3,17	273:17 274:2
399:22 402:15	75:25 81:25	408:19	301:11 306:11
house 62:8,13	82:4 83:9	image 309:23	335:15,16,17
120:24,25	84:22 90:25	imagine 341:15	356:15,25
121:4 122:25	92:19 95:9,9	immediately	includes 305:14
123:6,10,10	96:16 98:9	182:18 183:21	305:15 353:12
housed 274:8	102:11 114:23	342:4	including 88:4
huddled 133:6	127:3 135:7	impinge 162:10	255:7 283:9
huge 279:8	141:8 142:20	implement 187:5	369:16 396:11
hugo 2:15 5:18	144:22 149:7,8	368:3	incompetent
huh 160:6	150:9,14	implicating 33:4	325:9
human 15:13	152:22 154:6	implied 152:23	inconsistent
humanitarian	159:17 161:25	import 221:9	155:8
121:17	162:15 164:4,5	important 165:20	incorporate
humberto 24:22	164:6 173:24	244:6 294:12	295:17,22
136:6,13 137:4	174:15 181:8	295:6 394:18	incorporated
hyde 174:9	188:4,10,11,21	394:19 397:14	59:8
hypothetical	192:25 194:24	398:4,5	incorporation
390:2,7	196:8 198:24	impossibility	59:22
	200:3 203:16	305:16	incorrect 29:22
I	208:4 218:14	impossible	increase 194:14
idea 86:5 232:14	221:8,24 224:6	240:22	increased 277:21
236:19 242:13	224:11,21	impression	283:6
242:19 249:22	228:7 233:23	175:12 377:6,8	increasing
250:3 351:15	233:23 234:7	impressions	229:22,24
ideas 287:11	237:9 244:19	308:19 393:3,4	279:16

increasingly 213:18	industry 16:7,11 16:13 186:21	input 69:17 151:13 352:9	234:15
incurred 48:23 380:20	influence 127:21	inquire 81:11	interacting 135:20
independence 131:18	influenced 276:10	inquired 132:6	interaction 166:22 196:2
independent 38:9 118:16 119:14 154:22 248:21 291:9,17 297:19 334:5 351:7 352:19 391:22,22 398:25	influencing 128:4 131:19	inquiry 169:2 228:10 305:25	interactions 39:6,9,15 134:23 156:14 157:4,19
independently 290:24	inform 261:22 407:5	inside 64:25	interest 17:23 18:3,8 139:23 161:5 162:10 169:13 189:2 189:22,24 190:7 192:16 193:25 202:3 255:9 292:21 337:19 341:15 346:9 351:12 392:24
indicate 141:13 148:14 376:17	information 34:2 36:16 37:2 80:5,12 84:24 87:8 88:12 110:5 118:16 135:10 142:22 144:9 151:4,11 151:13,21 152:14 154:4 154:17,24 155:7 157:12 162:19 166:20 167:24 170:21 213:16 218:4 219:16 238:10 240:20 241:18 249:19 289:4 290:9 375:4 382:14 385:17 408:16	insistent 278:8 inspecting 86:9 inspection 25:20 58:13 76:20,20 77:14,18 78:18 79:16 80:2 118:24 261:9 263:9,13 267:15 362:9 364:9 365:11 389:5	interested 411:15
indicated 146:25 178:13 179:11 223:2 290:13 336:12 408:4	informed 79:22 79:23 100:6,20 126:16 175:13 210:24 212:24 261:24 364:16 364:17 390:20 391:6 406:18 408:8	inspections 55:9 74:8,19 76:16 77:12 122:18 212:19 282:9 282:10 362:25 364:4 388:19 389:15	interesting 270:10
indicates 95:21 335:2	informing 188:9	instance 226:4 245:5 394:5,25	interests 352:20
indication 164:9 336:24	inhouse 268:25	instances 226:2 227:21 395:3	interfere 4:8 9:2 289:5
indications 209:10	initial 201:4 337:20 342:18 345:5 367:17	instituted 384:14 385:11	interfered 240:24
indigenous 59:17 125:16 350:21	initially 60:2 93:2 217:10 231:19 232:12 234:18,19 255:9 311:24 370:4,5 374:6	institution 305:20 312:25	interferes 8:23
indirectly 71:24	initiate 384:23	institutional... 370:18	internal 17:9 381:4,11
indispensable 41:6 313:18,20 313:23	injury 15:23	instruction 238:9	international 15:13
individual 24:5 36:24 37:13 68:5 72:7 73:9 80:19 100:16 117:2,5 123:18 171:24 226:8 242:6,8 262:15 299:7 314:25 349:10	inlaw 38:5	instruct 201:12 instructed 238:7 268:3	interrogate 251:2
individualized 15:22	inperson 152:18 154:11	instructing 234:14 241:10 241:12	interruption 344:12
individuals 6:24 24:9,25 28:5 29:7 125:17 173:14 182:8 182:12 257:2 284:9 300:24 335:15 354:21 389:18 390:10		instructions 238:18	intervene 33:19 33:20 40:22 41:16
induce 293:9,16		insulted 243:14	intervention 41:10 307:22 311:23
induced 336:5		intend 7:4	interviewed 259:25 291:8 291:19
		intended 290:10 293:9 323:8 407:4	intimately 195:4 209:23
		intense 55:17	intimidate 78:23
		intention 140:6 166:15 308:14 317:9	intimidation 79:3
		interact 124:15	introduce 393:24 introduced 323:14 393:20

394:20 395:6	114:10 115:11	130:16 134:5	item 366:17
396:7 397:3	121:2,5 123:15	143:5 147:17	items 114:12
398:15	124:10,12	167:8 172:19	236:10
introducing	125:8 129:20	178:14 179:16	iteration 269:25
243:4	143:20,21	187:23 189:23	iterations 68:18
introduction	163:24 164:12	200:16 203:10	88:23
393:21	167:22,22	207:7 208:13	ive 257:23 285:3
invalid 335:22	168:24 169:8	209:19 210:4	327:17 333:16
invalidated	170:5 179:12	231:22 242:11	
336:5	184:24 192:11	243:15 253:10	<hr/> J <hr/>
invaluable	194:22 197:6	255:16 273:11	j 3:7 4:1 5:1
282:12,14	198:19 208:25	298:6 314:3	6:1,5 7:1 8:1
invested 258:3	209:2,5,15,23	317:16 325:20	9:1 10:1 11:1
investigate	210:17,25	326:2,8 327:19	12:1 13:1 14:1
247:19 248:21	212:17 214:3	329:7,9 331:19	15:1 16:1 17:1
253:24 254:2	214:21 235:16	333:3 335:11	18:1 19:1 20:1
304:22	237:25 244:19	346:7 347:14	21:1 22:1 23:1
investigation	255:4 257:19	348:16 366:4	24:1 25:1 26:1
56:16 65:19	261:12 282:13	374:12 376:11	27:1 28:1 29:1
118:21 242:3	287:13 292:15	376:21 394:22	30:1 31:1 32:1
247:6 249:6,23	292:19,19	396:23 399:21	33:1 34:1 35:1
249:25 250:11	300:22 306:20	400:7,7,25	36:1 37:1 38:1
336:17 344:6	335:3 346:13	401:16	39:1 40:1 41:1
344:18	351:25 354:14	issued 17:19	42:1 43:1 44:1
investigator	355:9 358:16	130:25 131:16	45:1 46:1 47:1
243:13 248:21	358:20 359:15	209:21 211:4	48:1 49:1,16
253:24 254:11	359:23 360:2	211:17 270:3	50:1 51:1 52:1
investing 217:12	362:4,9,11,13	276:2 279:3	53:1 54:1 55:1
investment 32:14	362:21 363:19	283:6	56:1 57:1 58:1
invoice 93:15,17	363:25 364:2,5	issues 15:23	59:1 60:1 61:1
93:19,24,24	364:13 370:6	32:10,24 35:9	62:1 63:1 64:1
381:7	389:14 390:11	35:11 36:10,11	65:1 66:1 67:1
invoices 96:22	involvement	42:19 43:3	68:1 69:1 70:1
373:16 380:25	26:11 57:7	55:17 75:14	71:1 72:1 73:1
382:2	98:16 102:14	76:10 98:9	74:1 75:1 76:1
invoke 7:5	166:13 171:12	105:14 111:11	77:1 78:1 79:1
invoked 178:5,6	190:10 195:6	142:25 143:10	80:1 81:1 82:1
335:23	208:8 214:18	145:21 171:19	83:1 84:1 85:1
invoking 335:24	214:22,23	177:19,20	86:1 87:1 88:1
involve 256:7	229:5 280:15	178:8,10,13	89:1 90:1 91:1
involved 12:3,7	291:22 292:6	180:5 181:3	92:1 93:1 94:1
20:23 21:25	294:12 295:6	182:10 187:12	95:1 96:1 97:1
37:19 43:20	297:5	191:21 195:4	98:1 99:1
44:19 45:11	involving 111:20	196:3,15 214:3	100:1 101:1
46:12,14,20	195:11 247:22	215:23 243:23	102:1 103:1
57:13 60:21	iowa 373:23	246:14 255:6,8	104:1 105:1
69:14 72:14	irrelevant 145:7	255:13,22,23	106:1 107:1
80:8,9,11	253:17	257:6 266:9	108:1 109:1
93:13 94:10	isnt 89:5 226:15	277:22 280:25	110:1 111:1
95:18 104:13	342:7 343:11	282:2 289:6	112:1 113:1
104:18,20	397:19 405:2	313:18 316:18	114:1 115:1
105:8,19 106:2	isolation 265:9	317:8 377:17	116:1 117:1
106:9 107:8	issue 7:13 35:4	379:19 407:6	118:1 119:1
109:23 113:8	50:18 71:16	issuing 210:14	120:1 121:1
113:11 114:4	78:25 83:13	374:4	122:1 123:1

124:1 125:1	234:1 235:1	344:1 345:1	294:11 295:4
126:1 127:1	236:1 237:1	346:1 347:1	321:8 350:14
128:1 129:1	238:1 239:1	348:1 349:1	361:10
130:1 131:1	240:1 241:1	350:1 351:1	john 219:10
132:1 133:1	242:1 243:1	352:1 353:1	johnson 202:10
134:1 135:1	244:1 245:1	354:1 355:1	203:14 205:8
136:1 137:1	246:1 247:1	356:1 357:1	join 164:5
138:1 139:1	248:1 249:1	358:1 359:1	350:18
140:1 141:1	250:1 251:1	360:1 361:1	joining 50:24
142:1 143:1	252:1 253:1	362:1 363:1	joint 34:6,9,10
144:1 145:1	254:1 255:1	364:1 365:1	351:5,15
146:1 147:1	256:1 257:1	366:1 367:1	joke 235:19
148:1 149:1	258:1 259:1	368:1 369:1	jonathan 24:2
150:1 151:1	260:1 261:1	370:1 371:1	267:4 268:20
152:1 153:1	262:1 263:1	372:1 373:1	278:16,17
154:1 155:1	264:1 265:1	374:1 375:1	jones 127:23
156:1 157:1	266:1 267:1	376:1 377:1	131:13 268:23
158:1 159:1	268:1 269:1	378:1 379:1	337:14
160:1 161:1	270:1 271:1	380:1 381:1	jose 3:15 5:12
162:1 163:1	272:1 273:1	382:1 383:1	108:9,15
164:1 165:1	274:1 275:1	384:1 385:1	joseph 1:15 4:23
166:1 167:1	276:1 277:1	386:1 387:1	6:3,14 67:20
168:1 169:1	278:1 279:1	388:1 389:1	149:13 203:21
170:1 171:1	280:1 281:1	390:1 391:1	305:7 409:5
172:1 173:1	282:1 283:1	392:1 393:1	412:5,21
174:1 175:1	284:1 285:1	394:1 395:1	joshua 3:7 6:2
176:1 177:1,4	286:1 287:1	396:1 397:1	406:15
178:1 179:1	288:1 289:1	398:1 399:1	jstavers 2:10
180:1 181:1	290:1 291:1	400:1 401:1	juampa 24:19
182:1 183:1	292:1 293:1	402:1 403:1	233:12
184:1 185:1	294:1 295:1	404:1 405:1	juan 24:20
186:1 187:1	296:1 297:1	406:1 407:1	234:15
188:1 189:1	298:1 299:1	408:1 409:1	judge 29:10
190:1 191:1	300:1 301:1	james 129:9	34:20 35:2
192:1 193:1	302:1 303:1	130:21 131:4	41:10 83:6,12
194:1 195:1	304:1 305:1	171:20 172:3	86:18 87:18,23
196:1 197:1	306:1 307:1	187:25 198:11	89:15 90:4,22
198:1 199:1	308:1 309:1	276:8 278:20	99:5 151:10
200:1 201:1	310:1 311:1	278:22 285:6	153:3 238:23
202:1 203:1	312:1 313:1	january 167:21	241:23 247:22
204:1 205:1	314:1 315:1	309:21 322:3	247:23 248:8
206:1 207:1	316:1 317:1	jared 230:14	249:9 259:13
208:1 209:1	318:1 319:1	jason 2:10 5:9	259:14 386:23
210:1 211:1	320:1 321:1	javier 2:15 5:19	399:9,11
212:1 213:1	322:1 323:1	108:9,15	judged 350:20
214:1 215:1	324:1 325:1	jc 321:8	judges 113:4
216:1 217:1	326:1 327:1	jekyll 174:9	248:16,25
218:1 219:1	328:1 329:1	jeopardy 238:3	judgment 17:19
220:1 221:1	330:1 331:1	jersey 2:14	17:24 18:3
222:1 223:1	332:1 333:1	job 38:11 281:12	65:23 102:23
224:1 225:1	334:1 335:1	364:22 367:7	103:3 190:8
226:1 227:1	336:1 337:1	joe 149:2 172:5	192:17 193:8
228:1 229:1	338:1 339:1	174:22,23	194:2,5,15
230:1 231:1	340:1 341:1	203:23 204:16	202:4 255:20
232:1 233:1	342:1 343:1	244:17 277:9	290:19 366:20

367:11 404:5
judgments 255:24
 366:11
judicial 58:12
 74:8 263:9
 365:11 389:14
judith 334:4
julio 2:16 5:17
july 7:24 83:20
 83:20 130:13
 227:14 278:2
 278:12 284:8
 348:20 349:6
jumping 231:21
june 1:12 4:13
 9:6,10 49:24
 50:19 95:22
 96:13 97:9
 203:19,20,24
 411:17 412:4
jungles 212:19
justice 97:23
 339:22 340:6
 342:24 344:5
 345:13 346:6,8
 346:12
justin 3:13 5:16
jvoss 3:8

K

k 6:5 177:4
kaplan 90:4,22
 259:14 386:23
 399:9,11
kaplans 86:18
 89:15
karen 66:4
 195:23 202:2
 204:17 205:24
 207:17 208:11
 210:2 256:16
 372:25 375:15
 375:23 377:16
kathy 50:2 96:14
 375:15,24
 377:16
keep 11:19
 132:15 180:14
 204:4 289:3,7
 294:12 295:6
 378:22
keeping 84:12
 268:9,13
kenneth 242:15
 276:15

kenny 50:2,4,8
 96:14 374:23
 375:15
kept 163:19
 268:5 297:6
 382:11,18,20
 383:17
kick 350:10
kimerling 334:4
 338:3
kind 11:8 33:25
 34:20 38:8,16
 38:23 40:8
 41:9 46:21
 59:21,24 60:10
 60:23 62:5
 66:6 72:8
 78:22 79:3,3
 79:18 103:14
 103:19 104:23
 120:5 121:16
 122:7 128:16
 128:22 135:10
 144:5 145:18
 145:20,22
 163:2 164:15
 166:4 172:17
 172:25 173:6
 174:9 175:7,18
 183:22 185:9
 186:3 187:5,11
 188:3,7 189:21
 191:9 196:25
 201:6 206:22
 213:18,22
 216:20 226:13
 226:15 228:3
 230:19 231:3
 231:15 232:25
 234:11,20,21
 236:4 237:7,10
 237:18 238:18
 243:12 245:16
 255:13,21
 263:18 267:16
 269:4,8 270:15
 275:19 279:3
 281:6,8,18
 282:13,17,19
 283:2 286:21
 287:24 288:9
 288:13 291:25
 297:2 324:13
 325:24 336:20
 337:20 343:7,9

343:19 345:4
 361:9 364:11
 366:25 367:4
 367:24 370:16
 371:4 372:4,6
 375:15,17
 377:15 387:23
 387:24,25
 403:9
kinds 32:24 59:4
 65:25 110:10
 124:2 187:8
 212:17 277:22
 364:24 368:4
kiss 205:24
 234:8
kjjjwm 348:21
 349:8
knew 27:8 55:24
 76:7 148:15
 173:14 260:25
 261:5,12
 262:12 265:23
 266:6 269:3
 277:19,20
 294:4,5,11
 295:5,15
 296:15 317:13
 318:6 342:19
 361:5 365:3,4
 365:15 407:24
 408:4
know 18:25 25:4
 25:15 26:5,7
 28:7 29:24
 34:7,24 36:6
 38:9,18,18,20
 38:23 39:2
 40:10,12 43:21
 49:7,10 50:14
 50:19 52:15,17
 52:19 55:3
 59:11 60:2,12
 61:14 62:10,23
 63:2,6 65:12
 65:14 66:3,3
 69:2 70:3,25
 72:14 73:6,23
 73:25 74:19
 75:25 76:19
 77:7 78:5,8,21
 78:22,24,24
 79:2,8,9,10,18
 80:18 82:10
 88:8 90:3 91:6

91:10 97:5
 99:20,24 102:2
 105:6,10,10
 107:4,9 108:9
 108:11,12,14
 108:18 109:20
 110:22 111:21
 112:5,7 113:16
 113:19,24
 114:16,18,19
 117:25 119:21
 119:24,25
 121:15,16
 122:9,10,11,14
 122:17,19,20
 123:9,13 125:9
 125:11 128:3,3
 128:7,16
 132:17,22
 133:5 134:3,6
 134:11 135:22
 136:10,21
 138:19 142:11
 143:11,12,12
 143:19 144:10
 145:22,22
 149:2,4,4,24
 152:2 153:6
 154:15,16
 160:10,20
 161:2,4,6,8,10
 162:16,22
 163:7,17
 165:13,25
 166:25 168:10
 169:10,11,12
 170:18,22,25
 171:10 172:3,4
 172:6,12,25
 173:6,21 174:6
 174:7,7 175:6
 175:10,15,17
 175:22 176:3
 182:12 183:2
 183:12,19,21
 184:8 185:3,13
 185:17,25
 186:10,18
 187:7 188:4,4
 188:12,14
 189:10 191:18
 191:18,19,21
 192:2,6,7,9
 193:18 194:12
 195:20 196:23

197:2 198:8	339:17,20,24	13:15 14:1,10	121:1 122:1,4
199:10,20	343:14,21	14:14,14,17	123:1,14 124:1
201:6,16,17	346:7,10,11,19	15:1 16:1 17:1	125:1,23 126:1
204:4,7 206:17	346:21,22	17:13,22 18:1	126:11 127:1
206:18,20	347:5 352:13	19:1,16,21	128:1 129:1
207:22 208:12	352:15 357:8	20:1 21:1 22:1	130:1 131:1
208:17 209:25	357:18,21	23:1 24:1 25:1	132:1 133:1
210:5,6 211:8	358:5,19,22	26:1 27:1 28:1	134:1 135:1
213:11,12,16	359:22 360:17	29:1 30:1 31:1	136:1 137:1
213:21 214:7	360:22,24	31:8,11 32:1	138:1 139:1
214:11 216:7	361:12 363:13	33:1 34:1 35:1	140:1,24 141:1
217:2,14	364:19 365:5	36:1 37:1 38:1	142:1 143:1
218:14 226:18	365:15 366:20	39:1 40:1 41:1	144:1 145:1,5
227:2,8,16	367:16,21	42:1 43:1,8	146:1,18,18
230:23 231:3	370:13,14	44:1,19 45:1	147:1 148:1
231:18 232:7,8	371:9 372:3,13	45:11,18 46:1	149:1,13,15,18
232:16 233:15	372:14 375:5	46:19 47:1,6	149:18,23
233:21,23	375:16 376:3,7	48:1,12,22	150:1 151:1
234:3 235:5,8	378:10,11,19	49:1,16 50:1	152:1 153:1
236:14,23	378:24 379:15	51:1 52:1,3	154:1 155:1
237:2,3,12,17	380:4 383:12	53:1 54:1 55:1	156:1 157:1,2
237:22 238:15	385:25 387:23	56:1 57:1 58:1	158:1,12 159:1
239:5,6,12,23	388:24 389:2	59:1 60:1 61:1	160:1 161:1
240:2,9,15	398:19 399:8	62:1 63:1,21	162:1 163:1
242:17,21,22	404:3 406:8,10	63:24 64:1,4,8	164:1,19 165:1
243:17,20	406:14,25	64:17 65:1	166:1 167:1
244:3,14,17	knowing 171:3	66:1 67:1,15	168:1 169:1
245:2,25	knowledge 12:8	67:19 68:1	170:1 171:1
246:16,17	12:11 34:4	69:1,19 70:1	172:1 173:1
250:16,24	36:20 42:3	71:1,8,11,14	174:1,22 175:1
252:24 256:18	43:3 59:23	71:17,18 72:1	176:1 177:1,10
262:6,12 265:7	60:8 61:2	73:1 74:1,4	178:1 179:1,8
265:9,18	76:24 99:25	75:1 76:1 77:1	180:1 181:1,22
266:10 268:16	117:2,4 118:7	78:1 79:1 80:1	182:1,22 183:1
269:6,7,9	171:13 181:23	81:1 82:1 83:1	184:1 185:1
273:18 275:3,7	198:2,5 247:20	84:1 85:1 86:1	186:1 187:1
275:9,10,15,16	264:13,17,19	87:1,22 88:1	188:1 189:1
276:3,20 277:7	270:21 283:8	89:1,23 90:1	190:1 191:1
277:9,21,23	290:3 298:17	91:1,15 92:1,3	192:1 193:1
279:3,8 281:13	298:21 317:24	92:16 93:1	194:1 195:1
281:24 282:2,6	317:25 318:3,5	94:1,15,20,24	196:1 197:1
282:12,23	known 26:13	95:1 96:1,13	198:1 199:1
284:16 285:22	175:3 196:14	96:14,22 97:1	200:1 201:1
286:18 288:4,9	274:9 291:12	97:12,17 98:1	202:1 203:1,21
292:14 295:10	291:23 318:8	99:1 100:1	203:23 204:1
295:20,24	360:25	101:1 102:1	204:12 205:1
296:14 298:22	knows 242:21	103:1 104:1	206:1 207:1
298:22 301:4,6	kohn 1:16 4:1,23	105:1 106:1	208:1 209:1
301:10 302:18	5:1 6:1,3,10	107:1 108:1	210:1,16 211:1
303:5,8 304:8	6:14,20,22 7:1	109:1 110:1,11	212:1 213:1
304:10,13,18	7:4,12,15,22	111:1,12 112:1	214:1 215:1
317:19 318:3	8:1 9:1,14,20	113:1,13 114:1	216:1 217:1
323:6,20 329:5	9:23 10:1,3,6	115:1,21 116:1	218:1 219:1
333:13 334:13	11:1,13,19	117:1 118:1	220:1 221:1
337:11 338:6	12:1,9,14 13:1	119:1,17 120:1	222:1,8,12,21

223:1 224:1	324:8 325:1	ksg0000427800...	227:11
225:1 226:1	326:1,4,24	410:11	lago 6:25 7:8
227:1 228:1	327:1 328:1,17	ksg00015456	16:18 18:3
229:1 230:1	329:1 330:1	348:20 410:14	32:20 41:14
231:1 232:1	331:1 332:1	ksg00028684	61:6 62:12
233:1 234:1,14	333:1 334:1	149:22	63:9 85:20
235:1 236:1	335:1 336:1	ksg0002868400...	86:13 89:17
237:1 238:1	337:1 338:1,20	410:10	180:4 251:14
239:1,7 240:1	339:1,15 340:1	ksg00028686	323:5 324:24
241:1,8,10,12	341:1 342:1	149:22	362:24 363:2
241:17 242:1	343:1 344:1	ksg00055094	370:11 393:3
243:1 244:1	345:1 346:1	140:21	399:18
245:1 246:1	347:1,15 348:1	ksg0005509400...	laid 118:2
247:1,3 248:1	348:18 349:1,2	410:10	lak 1:4 4:22
249:1 250:1,9	350:1 351:1,20	ksg0009207600...	language 101:25
251:1,6 252:1	351:23 352:1	410:11	135:25 310:6
253:1,13,21,22	353:1 354:1,5	ksg00125011	325:24
254:1 255:1	355:1 356:1	368:15	languages 22:15
256:1 257:1	357:1 358:1	ksg0012501100...	lantos 391:11
258:1,2 259:1	359:1,7 360:1	410:17	large 93:20
259:24 260:1	361:1 362:1	ksg00135246	101:2,13
261:1 262:1,19	363:1 364:1	48:10	232:20 248:19
263:1 264:1	365:1 366:1	ksg0013524600...	late 29:5 36:24
265:1 266:1	367:1,9 368:1	410:9	47:10 83:20
267:1 268:1	368:22,25	ksg00135248	136:2 178:23
269:1 270:1	369:1,14 370:1	96:11	192:6 219:14
271:1 272:1	371:1 372:1,18	ksg00135258	laugh 235:11
273:1,8 274:1	373:1 374:1	48:10	laughed 128:13
275:1 276:1	375:1 376:1	ksg00170293	launching 341:24
277:1 278:1	377:1 378:1,3	380:10	343:8
279:1 280:1	379:1 380:1,16	ksg0017029300...	laura 67:16
281:1 282:1	380:17 381:1,2	410:17	law 14:5 20:9
283:1 284:1	382:1,12 383:1	ksg00170404	42:19 50:24
285:1 286:1	383:17 384:1	380:10	53:24 59:9,12
287:1 288:1	385:1 386:1	ksg4279 204:16	60:13 103:12
289:1 290:1	387:1,2 388:1	ksg92076 246:24	105:4,13,16
291:1 292:1	389:1 390:1		139:15 140:9
293:1 294:1,11	391:1 392:1,4	L	161:2 171:12
295:1,5 296:1	392:25 393:1	1 62:22 63:4	181:12 184:23
297:1,25 298:1	394:1 395:1	lab 74:21,21	185:11,15,16
298:7 299:1,16	396:1 397:1,7	76:5,8,22,25	197:23 234:25
300:1 301:1	398:1 399:1	77:4,5,8,22	245:6,10 252:8
302:1 303:1	400:1 401:1	78:3,9,11,14	252:12 254:23
304:1 305:1,6	402:1 403:1	78:18 79:16	254:24 255:5
305:7 306:1,5	404:1 405:1,13	labeled 81:8	287:12 288:15
307:1 308:1,18	406:1 407:1,18	labor 232:22	301:24 302:9
309:1,13 310:1	408:1,21 409:1	238:25	349:18 355:2,2
310:2 311:1,12	409:5 410:4,8	laboratories	355:12 357:4,5
312:1 313:1	412:5,21	77:4	365:2 367:12
314:1,11 315:1	kohns 84:15	laboratory 77:12	373:18,19
316:1 317:1	ks 48:8	labs 76:3,9 79:6	374:4 381:4
318:1 319:1	ksg 12:18,23	lag 65:9 93:16	384:20
320:1 321:1,8	66:23 368:18	100:9 270:20	lawful 273:23
321:14 322:1	ksg00004278	371:13 372:3	296:5
323:1,8 324:1	204:9	lagged 66:8	lawsuit 168:4,9

302:10 315:12	lay 292:17	212:22 395:20	234:6 260:21
336:22	lead 15:15,17	lesnevich 102:18	limit 248:23
lawyer 8:5,11	45:13 178:19	lest 121:20	403:20
15:5 20:25	364:7,8 365:7	letter 18:22	limited 41:9
22:6 29:23	leader 60:24	19:2,16 47:10	42:21 147:16
31:6,19 35:21	109:20 125:19	47:21,22,23	147:18 307:22
44:11,16 45:13	leadership 24:9	98:13 99:6,14	311:23 396:11
46:5 53:25	44:14 47:17	99:23 136:4	line 51:12 57:21
102:9 117:7	100:4 196:22	139:10 146:24	80:24 101:11
118:23 144:15	leap 301:21	158:17 170:17	155:8 178:18
159:10 162:17	learn 252:17	189:6 190:16	216:15,16
168:7 172:13	learned 82:24	191:12 192:25	245:23,24
173:18 193:12	168:19 272:5	194:9 197:9,15	246:6 253:16
194:12 199:15	leave 60:18	197:22 199:22	258:25 270:15
200:7 215:19	217:21 308:7	214:23 218:13	295:3 410:20
218:7 219:10	319:16 327:11	220:11,14,15	410:23 412:6
234:25 242:2	386:15 401:9	220:18 221:9	lines 73:21 75:3
257:17 337:21	401:20 402:7	221:13,15,20	129:8 238:15
337:21 355:5	led 211:14	222:5,8,11,15	294:20
355:12 359:20	213:12 249:5	222:17,18	lingo 234:23
363:17 364:8	284:4 359:13	223:2,4,5,8,16	list 136:20
364:21 365:4	360:13	224:2,7,16,18	408:12
387:21 406:17	leeway 370:22	225:11,12	listed 58:15
lawyers 10:20	left 80:14 279:4	228:19 237:24	182:17 355:12
27:14,18 28:4	329:22 397:12	278:16 281:25	382:24
28:17 30:22	lefthand 51:24	283:18,24	lists 56:5
34:23 36:15	legal 22:2 42:11	284:5,8,10,11	literally 163:23
39:12 40:12,15	46:15 55:7,16	284:15 288:22	litigating 30:22
54:17 68:23	55:17 59:8,21	289:22 292:2	43:2 215:22
69:8 107:22	60:9 61:25	303:19 304:2,2	362:23
108:4 109:23	62:7 75:19	322:4,25 323:7	litigation 11:16
118:13,17,22	104:3 109:21	333:12 337:3	11:22 15:7,8,8
120:10,21	109:22 113:9	342:13 346:16	15:11 26:12
121:25 131:13	124:11 148:20	357:19 361:10	28:24 32:17
164:7 172:16	152:15 172:13	410:12	33:2 36:17,21
172:18,23	172:14,24	letters 147:6	37:23 40:23
175:17 183:4	178:7 180:2	157:12 161:14	41:8,17,18
194:16 200:4	189:18 193:4	189:12 199:20	42:12,20 43:6
200:11 202:7,9	195:2 230:7	207:19 222:4	43:16 44:20
202:13 203:14	233:14 234:17	222:22,25	45:12 48:23
204:22 206:25	240:21 241:11	224:5 226:17	52:25 58:12
207:12,24	242:4 245:4	level 55:21	59:3 68:8 71:8
208:3,18 213:9	246:17 247:20	75:13 103:18	71:22 74:8,18
216:13 217:13	248:15 260:14	119:7 227:9	79:7,9,13,20
231:10,24	299:13 333:2	229:24 279:10	82:8,9,20 85:6
232:7 233:9	333:14 336:22	361:13 366:13	92:3 93:10
235:3,8,18	345:4 347:20	leveled 248:12	95:2,15 97:14
238:7 239:9,16	355:15 362:6	levels 282:3	101:23 102:6
241:10,13,14	369:16,23	liability 367:19	109:17,18
242:2,21	384:14	liable 315:10	110:3 112:19
243:11 245:15	legalese 312:4	liaison 109:21	115:3,22
268:23 280:21	legislation	lied 293:15	116:15,21
307:11 341:16	105:8,12	379:8	122:16 123:16
356:6,10	lela 321:9	lies 293:9	126:20 134:4
366:18 405:22	length 57:13	light 172:3	142:23 177:14

177:25 180:4	184:16 185:10	336:22 342:6	machine 175:10
189:2,25 212:4	349:23,24	342:11 357:25	macneil 30:9
215:18 219:5	lobbyists 184:3	366:21,23	35:20
219:11 221:2	184:16,22	looked 65:25	maest 261:2
232:11 247:21	193:6,20	66:8 86:13	264:14 268:18
248:14 255:23	local 75:2	87:12 89:9	magistrate 83:12
263:20 279:19	166:18 231:9	163:15 164:15	mailed 383:15
293:11,17	located 4:16	166:3 398:17	main 208:22
298:5 299:12	12:9 76:23	looking 58:6	209:6
300:21 301:19	255:3	63:18 96:19	maintain 11:6,14
302:5 307:18	locations 158:10	132:19 169:3	69:3 394:11
309:18 313:13	lodge 7:9	193:18 216:20	maintained 9:20
313:17,24	lodged 258:25	237:4 255:21	11:25 69:8
316:16 319:10	344:20	310:3 342:2	110:21
351:16 352:2	lodging 369:17	369:12	maintaining 68:6
352:11 353:19	log 84:6 85:7	looks 49:18 57:5	maintenance
355:18,24	86:15 87:15	57:6 92:16	369:18
363:19 365:19	logs 84:9,11	235:9	major 197:3
368:2 380:21	85:23	lopez 138:11	243:10,14
393:3	lonesome 265:10	149:15,17	majority 317:15
litigationrel...	long 31:24 88:21	151:3	318:9 387:4
370:10	139:4 159:3	lose 132:18	makers 301:12,24
litigations	161:11 166:14	lost 154:6	making 63:22
27:16	187:14 218:12	lot 39:17 163:13	74:4,19 77:21
litigator 55:12	231:5,5 279:5	169:6 188:12	90:22 119:9
216:11	318:15 334:24	188:13,13	127:9 128:23
little 30:2	372:10 384:2	211:19 226:14	131:22 134:12
34:21 52:11	406:7	226:17 230:2	210:14 225:22
87:7 114:24	longer 57:7	232:21 282:6	243:22 244:3
118:8 174:12	104:18 122:18	327:17	301:15 332:15
175:6 192:20	138:10 186:22	louis 72:3	333:25 370:15
277:14 296:24	227:13 292:19	love 91:6	375:3 391:4
341:20 366:5	318:17 328:4	lower 106:18	394:16
370:22 371:6	335:22 362:24	lowrise 62:15	man 28:13 245:14
381:11	longrunning	ltda 368:11	manage 53:8
live 38:13 129:4	278:4	luis 3:15 101:10	115:2 243:15
lived 24:12	longwinded	108:22 121:15	managed 11:7
58:23 59:6	279:13	227:5 293:3,4	53:14 257:23
109:25 297:24	look 38:10 57:4	293:15	management
living 37:25	84:17 85:9,21	lunch 176:7	104:12 105:3
llc 2:13 5:18	85:22 86:3	177:12 181:5	105:16,23
llp 1:18 2:3,8	132:13 136:15	198:7 200:25	106:4,11 244:8
lobby 165:10	136:20 145:20	350:8 351:9,11	257:22 360:4
180:12	148:23 149:23	luncheon 176:12	manner 11:25
lobbying 178:9	150:4 153:7	lying 379:9	152:15 166:8
181:6 186:21	163:3 164:16		231:7 250:8
190:6,11	168:12 185:9,9	M	296:23 375:11
192:14 195:14	187:7 211:10	m 1:12 3:6 4:14	manslaughter
212:13	217:20 243:21	9:10 86:25	350:22
lobbyist 171:22	252:2 256:19	87:4 176:11,12	manuel 37:14
172:21 181:4	259:8,19 265:8	177:3,6 258:18	march 19:3,17
181:10,12,14	282:22 304:2	258:21 330:20	130:13 136:3
181:20,22	320:15 328:11	330:23 409:2,4	137:18 142:5
182:2,7,17,22	328:12 333:17	maam 8:25 119:16	142:14 150:23
183:3,17,22	333:21 336:21	138:2 283:12	151:14 154:19

158:3,25
 231:17,23
 236:8 257:12
 260:16,25
 261:7,8 321:6
 322:22 324:10
 324:23 368:12
 386:2
marches 112:18
 125:10 300:14
margin 51:25
mark 9:5 47:3
 140:19 149:9
 246:22 303:11
 338:14 348:22
 353:7 358:24
 368:10 380:8
marked 9:12
 13:11,14 16:17
 48:3,5 140:23
 149:11 203:17
 204:2 222:2
 247:2,18
 303:23 304:24
 320:24 321:19
 322:13 338:16
 348:24 353:16
 354:2 359:6
 368:7 380:15
market 3:4
marks 24:2
 178:25 267:4
 268:20 278:16
 278:17 281:17
 304:4
marriage 411:14
martin 3:15 5:12
 5:12 319:21
 320:13 387:13
 388:8 402:10
 404:18
mass 15:10
massachusetts
 305:3
master 3:12,13
 5:14,15 7:16
 7:21 19:15
 44:25 45:9
 47:5,13,20,24
 60:17,25 61:4
 61:9,18 63:17
 63:25 64:17,24
 65:18 66:12,21
 67:5,7,12,15
 67:17 70:10

80:25 81:15
 82:3,14 83:5
 83:11,16,21
 84:5,10 85:12
 85:16,19 86:4
 86:11,19,22
 87:6,10 88:7
 88:13,18,24
 89:4,8,20,25
 90:8,12,24
 91:5,9,12 96:7
 96:16 108:7
 111:12,19
 112:2,11
 123:20 124:19
 145:2,6,16
 146:6 150:9
 156:20 157:7
 157:22 158:5
 160:6,12,17
 176:8 193:3
 204:3 219:19
 219:25 220:8
 220:20 221:12
 251:5,16,19,22
 251:25 252:6
 252:10,15,23
 253:5,11,18
 258:16,23
 259:4,8,19
 271:8,17 272:3
 272:11,18
 273:4 274:13
 283:23 303:24
 304:17 307:25
 308:5,9,25
 309:8 310:16
 310:22 311:8
 311:12 314:8
 315:17 317:22
 318:4 319:14
 320:9,14,20
 321:2,16,24
 322:8,14,18,23
 323:10,21
 324:5 325:18
 325:25 326:20
 327:10,13,18
 329:15,20
 330:5,17 331:7
 338:24 339:7
 339:12 340:10
 340:18,24
 341:6 343:24
 345:19 347:11

348:6,11,14
 359:19 361:4
 373:14 385:10
 386:7,13 387:7
 388:4,9 389:8
 389:21 390:3
 391:16,23,25
 392:8 393:14
 396:13 398:10
 399:20 401:13
 402:6,12,21
 403:10,25
 404:10,20,24
 405:6 407:20
 408:20
match 66:10
material 143:6
 167:24 210:13
 239:23 256:20
 264:8 271:7
 281:3 296:14
 341:8 403:12
 403:18
materials 65:4
 144:10 148:22
 227:10 239:17
 262:16 263:7
 264:5 265:3,11
 266:23 273:9
 274:3 276:22
 276:23 296:3
 298:8,13,19
 299:2 301:3,16
 345:25 365:24
matter 6:25 8:13
 8:16 10:2
 13:12,17 18:10
 18:12 21:9
 23:18 29:11
 32:9,25 37:21
 44:3 47:12
 50:23,25 51:5
 52:7 53:13
 98:17 100:8,11
 100:14,21
 111:17 118:24
 152:25 167:11
 168:17 169:5
 172:2,14 179:5
 179:8 183:25
 184:23,24
 230:15 235:7
 253:14,21
 272:6 287:25
 288:7 290:14

291:20,22
 292:10 300:18
 308:20 317:23
 318:5 340:25
 348:16 359:21
 370:20 373:24
 378:12 405:7
 407:3 411:15
matters 11:22
 16:3 32:5
 65:14 123:24
 135:12 159:13
 175:14 190:12
 262:13 289:2
mawr 8:2
max 3:12 5:14
mayor 173:11
mccarthy 349:10
 349:11,12
 350:4,14 351:2
mccarthys 351:15
mcdermott 215:12
 219:10 393:25
 394:8 395:3
 400:2
mean 12:11 24:5
 68:20 70:22
 81:10 86:19
 95:4 118:8
 121:24 123:9
 136:19 191:7
 207:9 218:14
 243:24 259:5
 268:15 271:17
 276:24 283:23
 300:12 366:25
 403:23 406:10
meaning 344:15
meaningful 289:7
meaningless
 403:21
means 10:10
 111:18 408:12
 408:13
meant 208:4
 329:25
mechanical 81:4
mechanics 210:13
media 168:20
mediation 23:25
 25:8,12 129:17
 130:8 131:10
 131:12 132:5
 135:15 178:25
 212:14 213:2

267:4,6,12	337:13 341:18	385:18,25	288:12
268:16 269:2	347:5 348:10	mera 39:9	misled 286:2,6
275:18 278:5,9	350:8 376:18	merger 99:2	286:25 287:17
mediator 23:25	382:6,8 386:2	meritorious	288:10,18
278:10	387:5,17	78:11	mismanaged
meet 23:22 25:21	391:13 406:4,7	meryl 235:22	288:11
28:22 54:3	406:13	mess 286:8	mismanagement
90:19 158:22	meetings 24:15	met 25:25 27:10	287:25
174:20 233:8	25:13,17 29:4	27:14 28:17	misread 291:5
245:15 260:15	33:9 100:25	108:22,25	misrepresenta...
289:6 319:6	101:13,17,19	109:11 113:24	384:8
366:18	109:5 117:25	175:3 318:25	missed 83:9
meeting 28:3	130:9,14	405:22	missing 398:20
29:6,15,19,20	139:14 147:15	meter 283:3	mission 62:3
31:15,21 32:4	148:3,5 149:4	method 10:11	180:19
33:10,12,21	214:25 229:19	microphone 82:2	mistake 205:19
34:15,17 35:15	231:3 234:4	microphones 4:4	mistaken 270:2
35:17,18,24	240:14 241:7	4:7	352:6
36:4 40:7	246:11 249:15	mid 83:19 192:6	mittchell 28:19
51:14 54:10,13	260:4 352:22	middle 151:14	29:23 30:2,8
113:4 127:22	405:25	165:23	mixture 391:9
129:9 136:2	member 20:17	midtown 158:11	model 255:5
137:2,10,15,20	50:12 186:9	migrating 211:20	modest 111:3
137:25 138:13	members 104:2	mike 84:23	moines 373:23
138:25 139:4,7	125:2 171:25	milkman 234:10	moment 21:23
139:8 140:4,6	173:15 178:16	million 225:3,4	41:23 51:11
141:5 142:3,6	186:6 187:18	225:5 346:7	341:21 352:5
142:9,16	200:18,19	mind 74:11	moments 247:7
143:14 147:11	234:16 247:20	103:22 192:21	monetary 355:17
148:9,14	248:15 267:13	227:22 236:4	355:23
150:21,22,25	301:11	239:6 242:6	money 73:13 94:3
152:18,23	memo 381:12,18	246:20 251:8	104:14 125:24
154:5,12 156:4	383:11	273:25 274:6	174:21 175:11
156:6,22,25	memorandum	287:24 335:14	175:20 240:19
157:17 158:24	172:24 381:5	401:3 404:23	256:17 258:2
159:3,6,16,21	memorialized	minister 39:16	279:5 293:10
159:23 165:4	191:13	ministerial	293:11 372:17
165:21,22	memory 9:3	376:11 377:7	372:19 373:3,9
166:18 167:6	mendoza 108:10	380:4	374:9,18
169:14,22	108:16	ministers 39:15	monica 119:2
171:11 174:14	mental 308:19	ministries 39:17	321:9 362:11
174:16 175:4	393:2,10	minor 22:4 65:15	monies 56:21
180:16 186:14	395:12 400:15	171:18 195:21	64:19,20 71:5
198:18 207:20	mention 151:9	minus 204:22	94:25 97:3
213:7,11	mentioned 8:10	minute 64:5 76:3	261:14 368:25
218:16 229:15	9:13 36:5 46:4	191:22 201:23	378:5
230:5,6 231:9	76:3 99:7	245:24 329:17	monitor 43:16
231:13,16,22	129:19 140:14	386:8,14 397:3	month 43:7 66:5
236:8,9,16	162:17 167:9	minutes 112:8	86:20 89:11
238:13 249:14	169:15 177:12	244:13 245:25	94:7,8 117:8
264:14 285:5,6	196:9 199:20	282:13 303:18	140:8 173:9
285:10 287:5,5	200:14 201:22	329:24 330:4	215:4
287:7 293:7,22	215:15 231:25	330:16 368:21	monthly 65:7,8
300:16 301:7	246:11 256:24	402:18	93:2,15 94:2,4
332:21 337:12	262:7 365:22	mishandled	95:10 110:25

227:16 281:22	68:3,4 69:3	neck 302:2	67:4,6,10 81:2
370:18,21	mutual 389:2	need 8:19 67:13	89:22 91:7,11
months 93:18		81:2 143:12,24	91:14 95:6
107:4 116:4	N	147:18,19	113:2 140:17
122:12 190:20	n 2:2 3:2 6:5	161:13 189:15	149:7,12
213:4,5 227:12	177:2,2,2,4	207:22 213:14	150:14 156:17
228:9,11,16	410:2	213:15,16	156:24 176:6
232:16	naacp 103:24	226:19 246:6	177:9 203:16
morning 6:10,11	110:7	246:11 281:20	204:8 220:13
86:23 118:9	nail 286:16	282:22 325:14	220:15 221:13
276:12	name 4:11,22	329:17 330:14	221:14,24
mothers 108:8	6:12 14:11,18	370:13,14,23	251:9 253:12
motion 41:3,8	20:6 24:14	377:3 382:16	253:20 258:13
77:17,24 79:19	29:23,25 30:5	386:8,14,15	258:23 259:6
128:8 144:16	30:11,17 53:2	397:10 401:14	259:17,23
145:10 213:20	53:3,17 56:11	401:23	272:19 279:23
282:7 392:7,7	68:9 76:8 94:7	needed 124:20	294:24 303:10
392:9,10 393:8	108:15 119:3	193:23 199:9	303:15,19,25
393:13,14	138:11 142:21	199:23 290:14	304:5,9,15,21
395:25 397:9	144:10 159:11	292:7 365:24	306:4 308:13
399:7 401:11	169:22 186:16	369:25 373:9	308:22,24
motions 135:6	186:17 215:21	374:18 391:7	309:3,19 312:9
230:10	216:5,6 218:7	needs 327:19	312:17 315:15
motley 164:10,11	219:10 223:13	negatives 297:12	319:16,20
215:15,16	262:12 316:23	negligence	320:10,12,14
216:10,13	319:3 372:25	350:22	320:18,23
218:5,10,20,24	412:4,5	negotiate 314:14	321:6,12 322:3
257:2,6 258:4	named 25:15	358:10	322:12,16
move 76:19	119:2 136:14	negotiated	323:6 324:3
114:22 143:14	136:23 155:20	168:15 191:4	329:21,25
144:23 145:21	315:6 316:12	300:20 314:12	330:14,25
146:4 237:7	349:10	354:18,20	338:11 353:7
288:15 292:11	names 28:12,14	355:8	353:21 354:3
314:5 329:12	28:16 202:8	negotiating	358:24 368:8
343:23 390:14	naming 316:3,14	196:20	368:18 380:7
moved 93:4	naranjo 2:16	negotiation	386:25 387:12
158:10 242:14	narration 162:16	178:20 191:8	388:7,11 389:8
247:12 362:9	narrow 359:23	205:20 217:25	389:10 392:12
movement 175:15	narrowly 335:9	237:19 279:12	399:16 402:9
movie 174:18	nasty 233:15	306:20 354:15	404:17 405:20
235:20 236:2	nationality	negotiations	406:15 407:2
moving 110:2	254:23	194:23 358:16	408:10,24
196:25 261:11	nature 36:12	358:21	410:4
multipage 47:21	55:7 206:14	neil 30:18	never 34:13 70:2
47:23	288:14 334:9	neither 252:4	70:5,6 115:14
multiparty 15:20	355:21 385:2	315:4	165:17 167:12
15:21 16:3	406:20	nephew 38:4	180:15 189:7
multiplaintiff	near 34:22	net 204:21	192:8,24
103:20	necessarily 38:6	network 351:18	198:14,17
multiple 77:11	38:10 116:7	352:10,18,25	200:11 214:20
134:21	117:9 188:14	neuman 2:5 5:6,6	215:10 217:24
multiplier	218:19 231:20	6:9,15,18 9:5	219:7 237:21
217:10	248:23 266:4	13:10 17:4	240:15 247:12
multitude 352:20	267:8 382:15	47:2 63:20	251:12,15
mutti 67:20,21	386:3 390:19	64:3,6 66:20	253:4 258:9

290:3 297:4,14	388:16	305:10 306:8	273:3,5 307:23
301:20 325:6	normally 309:21	number 4:21	308:2 310:17
350:6,11	382:18	17:16 53:16	310:19,21
363:22 378:6	notaries 305:2	72:10 81:16	311:5 314:5
378:21,22	notarized 308:24	88:23 96:4,9	315:13,25
new 1:3,18,19,21	309:4	96:11 100:17	316:8 317:17
2:4,4,14 4:12	notary 1:21	109:9 117:10	319:12 323:22
4:17,17,21	409:11 411:4	119:24 143:22	324:7 325:16
21:9,11 23:19	412:25	161:2 186:23	326:2,18
37:21,22 39:19	notation 373:19	186:25 191:20	328:23 331:5
39:22,24,25	note 4:3 49:15	204:6 222:14	340:8 345:17
42:23 54:21	97:2 223:5	226:10 275:5	347:9 359:17
79:7 93:10	noted 48:24	275:13 279:16	361:2 373:12
98:6,18,23	409:4	294:22 304:11	379:16 386:5
100:7,14	notes 141:4,9,14	304:16,19	389:19 391:24
101:14,18,23	142:8 258:13	321:23 348:19	392:2 395:21
107:17 136:17	notice 186:2	373:5,21 375:2	395:24 407:15
139:19 140:10	330:11 386:17	375:17 377:18	objections 7:9
158:8 163:17	393:17 398:6	393:16 395:8	134:21 279:15
193:21 212:4	398:14	395:10	279:25 280:4,7
217:13 240:10	noticed 182:15	numbered 336:23	393:13
292:22 314:19	400:5	numbers 48:9	obligated 229:2
316:24 355:11	noticing 96:17	101:2 140:20	obligation
356:20 364:20	noting 141:17	149:22 204:9	394:24 395:4
370:13,23	notion 79:5	222:9,13,19	397:2 400:16
375:3,17,18,24	154:21 175:18	246:23 321:10	obligations
378:25 411:5	187:3 196:17	353:11,24	178:4 179:18
412:2,2	231:15 232:6	368:14 380:10	193:20
news 170:25	232:18 241:25	numerous 284:19	obliged 227:3
269:10 361:19	263:19 269:8	393:2 394:7	obrien 3:3 12:20
newsletters	280:18 287:18	nunez 238:24	observe 129:5
298:15	334:23 356:10	241:23 242:11	observed 42:9
newspaper 133:25	notwithstanding	247:23 248:7	obtain 36:15
ngos 125:7	394:9	249:9 254:2	118:16 135:9
nice 121:11	november 24:3	nunn 186:8	154:23 297:21
174:22	44:21 47:7,11		obtained 18:9
nickname 24:19	104:17 129:17	O	37:6 260:19
nicolas 155:24	130:8 131:10	o 6:5,5 177:2,2	355:18,23
nightmare 244:9	133:10 134:20	177:2,4,4	obtaining 102:14
244:9	139:11 146:25	object 253:16	270:9 384:9
nine 228:9	158:17,20	259:6 399:12	obviously 21:19
ninemonth 228:6	160:22 170:17	objected 277:17	170:14,23
nominating 102:8	179:2,9 184:7	283:4 393:20	237:4 271:25
non 98:8 100:10	189:12 199:21	394:20 397:17	275:20 289:16
105:14 106:19	213:2 214:22	398:16	299:10
nonlawyer 172:9	218:13 220:11	objecting 184:18	occasion 54:19
172:9 194:13	221:10 222:10	396:5	occasions 23:6,8
nonlawyers 25:5	222:18 223:8	objection 7:11	28:21 54:6,7
189:20	224:14,15,18	7:15,17 123:19	77:11 85:17
nonresponsive	224:19,21	124:17 144:22	108:24 117:20
144:24	225:11 229:21	145:14 150:8	117:23 158:21
nope 148:12	231:11,18	150:11 156:15	252:14,16
185:23 215:10	237:6 267:4	160:3 192:18	284:19 319:5
215:14 251:18	278:6 281:25	219:17 231:20	occupation 8:4
251:24 367:13	283:5,10 286:4	258:24 269:22	occur 122:15

125:10 190:19	officer 110:17	142:24 211:19	90:17,22
232:18 233:9	342:14 344:21	239:2 261:10	106:22 144:8
237:19 406:4	officers 115:12	281:2	144:17,20
occurred 8:15	171:25	onise 354:11	145:11 146:13
24:13 36:6,23	offices 1:17	online 68:20	148:21 151:10
84:20 95:18	20:9 49:3	oped 226:10	151:25 152:17
99:2 120:13,14	61:16,20 62:17	open 376:5	152:20,21
142:9 159:15	63:3,8 139:2	opened 375:10	153:2,12,13,17
168:19 169:20	158:25 241:9	376:9 377:23	153:22 188:8
169:23 208:16	official 115:18	openended 133:18	255:20 259:12
215:3 216:17	180:18	opening 9:14	347:22 366:22
237:23 238:24	officials 124:23	84:13 186:24	396:2,3 403:7
257:15 285:11	248:9,17 249:3	377:6 379:23	410:9
360:6,18,20	offputting 175:7	operate 369:25	ordered 82:21
405:25	oh 49:23 104:20	operating 146:22	126:25
occurring 175:5	132:7 137:24	193:22 318:18	ordinary 10:5
360:11	173:2,19	318:20	11:21 382:12
oclock 165:7	175:25 201:7	operation 56:6	oreilly 301:13
october 23:15	222:13 343:9	56:10 58:8	301:17
231:18 280:7	oil 16:14 24:13	114:20 360:3	organization
offer 205:22	58:24	operations 58:25	58:18,21 59:2
401:20 402:8	okay 8:22 21:15	382:13	59:14,24 60:19
offered 180:8	44:22 81:13	operative 354:19	64:19 83:23
187:21 408:6	88:25 91:11,13	opined 102:18	103:25 104:8
office 10:15,24	104:20 123:21	opinion 102:20	114:25 125:12
24:25 28:8	150:3 185:14	226:12	186:20,22
31:22 54:13	191:10 201:24	opportunities	297:20 299:3
61:2,7,8,13,19	219:25 244:23	85:11,14	351:19 352:19
61:22 62:5,8	257:24 272:18	349:25	354:11,12
62:12,13,16	277:11 295:2	opportunity 85:2	organizational
74:25 118:25	310:14 325:25	85:8 149:2	103:24
123:11 136:8	327:10 338:18	153:9,15	organizations
138:9,11 141:5	339:14,23	211:15 276:25	24:10,11 69:16
150:21 155:21	348:14 392:3	277:5,8 296:7	125:7 302:22
158:8,9,11	401:7,13	398:3 407:8	354:16,25
159:11 169:23	403:22,25	opposed 55:8	357:4,20
174:14 177:24	old 35:12 103:22	107:22 212:18	organize 124:15
182:15 183:14	132:8 162:11	239:10 300:21	382:21
183:14 189:9	312:14 349:12	opposing 77:24	organizer 110:17
211:24 215:3	older 324:13	78:12	organizing
215:20 216:10	omitted 285:4	optimist 255:11	109:24
231:22 232:24	once 43:7,13	optimistically	oriente 38:13
235:18 236:9	85:8 95:7	191:16	55:9
236:12,17	158:23 204:23	option 302:12	original 35:14
249:14 250:25	220:5 332:15	options 33:17	75:20,24
253:2 274:7	390:16 404:21	145:24	136:17 150:17
276:20 327:2	oneday 391:15	oral 123:2	272:6 322:6,7
332:22 333:12	onehour 159:16	192:23	322:9 354:19
333:14 334:14	onemorning	orally 194:2	355:8 356:4,9
334:14,17	391:15	orchestrated	356:14 357:2
341:13 342:15	oneonone 230:18	163:14	359:12 371:5,8
362:10 369:17	ones 184:5,7	order 13:12,16	388:18
369:18,18,24	215:2 292:4	13:21,24 66:16	originally 18:23
370:2,5,19	316:22	81:9 84:3	19:21 48:16
371:2	ongoing 88:22	86:18 90:9,16	87:18 92:11

167:19 249:21
 255:2 263:3
originals 16:24
originated
 345:14 393:5
ormand 3:13 5:16
ought 243:19,21
 308:7
outclip 338:13
outcome 411:15
outline 216:25
outlined 100:5
 217:5
outofpocket
 18:11 92:8
outrageously
 290:11
outreach 195:17
 239:15
outright 290:8
outset 109:24,25
 313:14
outside 12:21
 42:12 64:19,23
 112:22 127:10
 133:12,16
 134:12 165:13
 220:22 225:17
 268:25 363:3
 365:20 377:24
outtake 326:25
 327:8,14
outtakes 111:13
 111:24 112:3
 260:22 332:23
 339:2 347:17
overall 79:24
 190:10 307:15
 335:11
overambitious
 290:23
overarching
 239:4 335:24
overbudget
 122:10
overcome 243:19
 404:8
overhead 370:19
overlapped
 107:18
overly 291:5
 312:11
overpriced
 226:13
overriding

335:25
overruled 311:5
 326:3
oversight 187:11
overstated
 228:15
owe 227:3 259:22
owed 95:23
owner 317:15
 318:10

P

p 2:2,2 3:2,2,3
 6:5 176:11,12
 177:3,4,6
 258:18,21
 330:20,23
 409:2,4
pablo 24:20
 108:12 149:13
 232:19 234:15
 287:6 293:2,3
 293:14
packet 151:12,20
 154:17,19
 155:4
pad 57:20 64:3
page 49:15,24
 51:12 72:2,25
 91:21 95:20
 96:8 141:13
 204:15 223:7
 224:8,23
 225:10,10
 227:24 228:19
 240:16 288:22
 289:21 293:2
 293:19 294:19
 294:22 296:15
 304:3,20 305:5
 305:15 312:18
 323:25 354:5
 357:25 369:13
 381:11 410:3,7
 410:20,23
 412:6
pages 48:21 50:9
 50:15 51:20
 81:20,22 97:7
 217:17 222:16
 222:20 321:22
 323:15
paid 43:9,11
 56:21 68:23
 69:2,2 70:20

70:23 71:6,16
 71:18,19,25
 72:11 73:13
 92:16,23 94:11
 94:16 97:4
 110:11 114:7
 124:6 133:12
 133:16 190:5
 194:19 225:4
 261:15 312:21
 355:20 378:4
 383:18
pain 302:2
pallares 37:14
 37:17,24 38:15
 38:21 112:14
 347:22
pan 211:4
paper 51:9
 206:25 312:6
 332:24 333:23
 336:21 337:8
 341:22 343:21
 371:7
papers 20:16
 29:25 108:2
 216:8 303:9
paragraph 224:23
 227:23 228:18
 248:4 284:15
 289:22 293:2
 305:14 321:14
 325:3 350:13
 355:15
paragraphs
 336:23
paralegal 138:9
parameters 120:6
parcel 146:7,16
pareja 321:9
parenthetical
 390:4
park 1:18 2:3
 4:16
parliament 125:3
parsed 282:17
part 10:18 36:14
 43:14 46:3,9
 48:15,18 49:21
 66:25 67:2
 68:24 79:12
 83:10 109:16
 111:16 118:25
 126:19 137:14
 143:16 146:7

146:16 154:6
 161:7 164:25
 166:2,2 172:13
 172:16 184:13
 187:16 189:19
 193:11 211:18
 212:15 214:2
 221:8 227:19
 229:14,24
 236:6 252:20
 264:10,11
 265:5,6 266:17
 266:18 267:9
 267:10,21
 296:8,8 309:11
 319:9,17
 321:18 331:6,8
 332:22 334:2
 346:25 347:12
 347:20 353:22
 357:7 365:10
 381:25 407:8
participant
 348:12
participants
 35:16 218:21
participate
 79:15,17
 102:25 137:21
 137:25 139:24
 230:11 235:6
 245:16 263:23
 278:9 362:17
participated
 24:14 25:16
 58:11 117:21
 131:2 159:6
 268:23 300:17
 404:15 405:9
participating
 55:8,16 137:5
 140:3 161:20
 230:4,21
 311:22 320:2
participation
 239:3 360:12
particular 49:12
 50:13 74:2
 94:6 104:21
 155:4,5 169:13
 210:6 225:24
 229:17 230:4
 231:22 236:24
 277:24 299:22
 299:24 300:24

310:12 324:16
 351:12 403:8
particularly
 15:14 22:20
 68:16 143:25
 196:12 279:14
 328:17
parties 4:9 5:2
 41:6 47:18
 87:15 88:4
 89:15 90:18
 144:8 154:24
 172:23 187:24
 201:14 263:12
 280:13 296:4,9
 306:10,18
 313:21,24
 411:13
partly 190:18
 287:24
partners 30:25
 318:20
parts 270:16
party 98:22
 126:21,22
 172:7,20,22
 248:9 313:18
 315:16 381:7
passed 105:9
 107:10 188:2
 399:22 402:16
passive 233:2
patricia 3:6
 5:25 406:14
patrick 349:10
pattern 16:25
 233:20 236:6
patton 87:21
 219:4 251:12
 258:8
pause 57:18
pay 43:8 46:20
 72:19 119:17
 119:25 122:4
 126:15,23
 188:23 227:6
 229:2 313:3
 379:13
payable 128:10
payaguaje 2:15
 222:7
paying 117:13
 120:8 188:18
 293:10 369:14
 379:10

payment 64:8,12
 71:13 72:16
 73:3,18,18,24
 93:2 95:10
 104:11 128:12
 134:15,16
 206:19 378:16
 382:6 383:5,6
payments 57:10
 57:17 63:22,23
 64:13 65:13
 70:17 71:12
 72:3 74:4,20
 74:25 75:4
 91:25 97:18
 110:15,25
 126:17 127:9
 127:11 130:16
 134:12 217:9
 226:8 227:25
 249:10 370:7
 377:23 379:17
 379:22 380:24
pc 30:25
peace 338:8
pendency 106:19
pending 23:19
 32:6,25 230:10
 331:2
pennsylvania 3:5
 8:2,9 14:3,22
 305:3 384:16
 384:17
people 27:8
 30:12 36:10
 51:5 59:5,16
 61:15 73:10
 79:9 96:10
 101:2,4 121:19
 121:23 129:4
 133:6 164:20
 166:10 173:6
 185:12 187:4,7
 189:8 206:19
 206:21 207:21
 239:20 242:20
 243:25 244:18
 263:7 276:20
 292:18 300:5,8
 333:16 335:18
 335:18 346:22
 350:21 361:17
 389:12 390:18
 391:4
perceived 196:13

percent 21:21
 101:7 104:11
 129:23 161:25
 162:8 190:21
 190:24,25
 197:16,20
 224:6 350:16
 351:11 355:17
 356:5 389:3
percentage 189:4
 189:6 190:7,13
 192:16 193:25
 197:12 199:15
 204:21 355:16
 355:19 356:18
percentages
 204:24 318:14
 318:23
pereja 119:4,5
perfectly 148:19
 163:2 198:13
 212:16 277:11
 296:20
perform 187:10
performed 332:2
 333:5 336:8
performing
 280:25
period 30:23
 44:12 48:24
 56:19 57:7
 66:9 76:5 80:7
 93:9 106:16
 107:3,10,15
 116:3 117:14
 157:14 166:14
 186:20 189:13
 191:2,19
 200:12 207:13
 209:3 210:20
 212:5,25
 227:11,18
 229:20 238:21
 244:24 254:24
 270:13 271:15
 277:19 287:4
 289:15 305:25
 318:15 332:3
 335:2 349:19
 349:20 365:16
 366:3 368:11
 371:19 372:10
 379:18 383:13
 386:18 399:13
periodic 364:18

periodically
 115:24 116:12
 368:24
periods 20:15
 21:5,7,8 42:24
 52:22 93:20
 124:8 289:16
 371:13
permitted 103:13
 392:18
person 22:9
 64:25 75:2
 117:13 141:15
 174:4,7 175:24
 188:12 226:25
 226:25 240:10
 265:18 277:6
 296:12 376:21
 377:2,14
 381:17 388:18
personal 71:22
 99:24 116:25
 244:20 300:10
 300:13 325:5
personally 21:25
 71:9,21 79:14
 95:5 193:10
 276:17 306:20
 319:11 325:15
 350:18
personnel 17:11
 300:23
perspective
 114:17 115:19
 140:5 196:14
 257:23 275:22
 335:20 341:10
persuade 403:7
perusing 150:2
 204:11 294:25
 306:14 338:17
 348:25
petition 214:6
petroecuador
 37:8 41:6
 305:18 306:12
 306:16,17
 307:8 311:17
 312:23 313:10
 313:15,23
 315:5,9 316:3
 316:15,24
 317:5,10,14
 318:9,19
petroleum 16:6

16:10,12	137:4,22 139:9	9:11 13:13	215:9,13
186:21	142:4 222:6	19:22 21:12	216:21 234:24
phamill 3:7	287:6	23:23,23,24	235:8 246:25
phase 39:19	pichincha 372:18	24:5,6 25:2,10	249:11 251:14
43:23,24 44:13	378:14	25:16 32:20	261:4,21,22,25
45:16 58:13	pick 4:4 10:16	33:13,17,19	262:4 263:24
79:25 80:2,3	picture 270:16	34:5 36:2,21	264:6 272:24
230:22 261:12	286:8	36:25 37:18	274:25 275:4
263:6,10,11,13	pictures 72:20	40:14,21 41:15	275:11,21,23
263:14,19,23	341:18	45:22 46:7	276:9 277:16
266:18 267:15	piece 51:9	48:2 50:25	279:7,25
279:2 314:3	128:17 147:21	53:10 54:18	280:19 283:4,9
337:21 362:4	213:25 217:21	68:23 69:8	285:2 286:13
362:10,19	217:22 266:8	70:21 71:6	291:13 292:5
364:9 367:20	266:25 270:19	75:9,19 76:4	292:15,24
367:24	272:17 332:23	77:3,7,10,23	294:12 295:6
phasedown 192:4	333:23 337:8	78:12,19 85:21	295:16 296:16
phases 263:5	341:22 361:19	86:13 87:20	296:21 297:4
389:6	piecemeal 337:25	88:5,8 89:17	297:18,21
philadelphia 3:5	370:15	98:2 99:16,21	299:13,22
8:9 82:10 85:6	pieces 92:6	100:4,6,16	300:9 302:3
87:14 139:2,20	226:10	101:5,5,18,21	303:22 307:7
174:20 242:16	pin 329:6	102:8,15 105:7	307:18 312:10
376:19 384:15	pinpoint 270:17	109:16 110:7	312:14 313:7
phone 10:16 36:9	pit 70:12 266:7	113:5 115:3	316:22 317:9
216:14,18	275:16	123:18 124:7	317:14 319:9
244:12 278:22	pitch 38:11	124:14 125:12	323:5 324:25
351:10 375:22	pits 285:15	128:4,20 129:2	326:15 331:20
377:2,13,14	place 4:6 18:19	129:14 131:6	332:10,10
396:18	24:2 72:20	131:19 132:6	333:2,7,24
phones 4:6	76:18 82:10	134:24 135:19	336:14 338:7
photocopying	83:24,24 87:25	136:22,24	338:15 342:9
49:20	101:14,16	140:22 146:19	342:21,23,25
photograph	104:17 160:9	147:13 149:10	343:18 344:3
285:14	247:12 384:2	151:20 155:18	344:20 345:15
photographed	384:25 390:17	155:23 156:13	345:22,22,24
128:19	plaintiff 1:6,16	157:4,18	346:18 347:20
photographer	2:4,9 6:22	158:15 164:23	348:23 350:18
72:8	18:22 19:8,12	166:23 167:4	352:14 353:15
photographic	19:16 21:14	167:23 168:21	355:10 357:15
72:15	24:10 54:13	173:13 177:13	358:11 359:5
photographs 37:3	61:25 62:7	178:7 180:12	360:6,8,19
132:10	76:24 103:15	181:10,14	361:11 363:5,8
photos 112:20	136:14,17	182:3 183:5	364:7 365:9
phrase 166:25	137:5,6,7,8,12	184:4,17	368:6 380:14
221:19,22	137:14,15	185:22 188:19	385:20,24
287:16	178:22 187:3	189:14 190:2	388:19 391:21
phrased 40:25	195:2 196:19	192:15 194:11	399:18 410:7
133:16 295:25	245:13 284:11	194:18,21	plan 261:23
phraseology	288:8 302:22	195:16 196:10	262:2,4,5,9
288:9	336:20 345:4	198:20 199:11	play 212:2
physically 86:9	351:8 354:25	199:21 202:23	player 196:24
piaguaje 2:15	357:3,3,19	203:25 208:23	playing 121:22
5:19 24:22	364:8	209:6,17	plays 192:25
136:7,13 137:4	plaintiffs 7:2,8	211:17 214:16	pleadings 30:6

46:5 47:12
 79:20 135:12
please 4:3,6
 204:6 205:20
 219:24 221:17
 245:23 303:14
 315:18 319:17
 368:17 373:20
 381:13 387:15
 402:6
pleasure 198:18
plenty 235:8
plus 379:2
 394:17
point 35:2,4
 37:16,20 44:2
 44:6,10 50:21
 59:20 67:22
 74:9 76:19,19
 86:6 95:21
 96:21 97:8
 98:11 107:16
 108:19 109:20
 119:22 121:7
 131:15 142:22
 161:15 162:6
 162:17 163:21
 164:14 165:4
 166:11 170:8
 170:12 171:2
 171:20 180:20
 181:11 182:14
 182:18 183:23
 187:13,25
 190:4 192:6
 200:5 206:18
 206:23 207:16
 207:24 208:9
 208:24 209:4
 209:25 210:2
 210:21 212:7
 214:24 217:25
 224:9 227:8
 231:4,4,21
 233:5 234:22
 235:4 236:3
 237:4,23
 238:19 249:17
 250:18 254:5
 262:13 265:25
 272:10 276:25
 277:2 281:19
 282:14 283:3
 287:18 312:16
 317:5 323:20

324:22 327:21
 328:25 333:11
 333:18 334:10
 337:2 358:8
 367:10 384:24
 401:3
pointed 387:19
pointing 222:14
points 46:23
 180:7
political 243:15
 244:8
pollu 380:13
poncevillacis
 53:18,20 54:4
 54:25 55:20
poopooed 173:2
porter 27:23
portion 70:24
 95:25 96:3
 173:25 194:4
 197:18,19
 232:20 307:13
 307:14 328:20
 330:10
portray 391:21
pose 367:3
posed 7:14,19
position 22:8
 33:20 107:7
 123:24 140:12
 181:25 188:10
 202:3 213:10
 228:23 229:8
 237:11,14
 240:9 254:6
 296:9 328:8
positions 33:13
possess 321:23
possible 78:24
 119:22 120:4
 130:2 151:6
 208:12,15
 216:23 218:20
 245:11 255:12
 279:18 303:4
 323:4 352:3
 383:10
possibly 29:6
 50:12 292:3
 374:23
post 34:24 69:4
postage 382:24
posted 69:22
posters 61:16

postgame 34:24
postings 69:21
posture 33:16
potential 18:8
 26:12 275:6
potentially
 50:24 120:8
 173:15 260:10
 386:22 407:17
power 70:5 102:6
 259:12 363:5,8
 363:10 402:4
powerpoint
 268:21
pr 124:15 208:22
 209:6
practical 70:7
 253:13,21
practically
 246:3
practice 41:3
 77:17 79:19
 252:7 282:8
 349:18 383:22
 384:17
preapproved
 225:17 390:20
preceding 296:15
precise 152:3
precisely 135:9
 137:11 185:3
 260:20 274:22
predates 99:13
predates 305:24
predecessor
 252:12,16
 314:25 354:21
preexisting
 352:19
preferences
 179:20,23
 180:14
prefix 12:18,24
 66:23
preinformed
 391:5
premise 143:13
 174:25
preparation
 230:8 281:8
 294:13 295:7
 297:5 355:10
 402:25 403:16
 404:15 405:10
 406:23

prepare 23:24
 49:4 107:6
 217:15 405:15
prepared 49:9
 50:8,11,16,20
 51:10,19 72:8
 84:2,4,6 85:7
 85:9 97:8
 172:23 189:7
 205:24 212:16
 247:5 278:10
 296:4,16
 339:18 369:8
 380:17 381:12
 402:19 407:5
prepares 381:18
preparing 281:5
prereview 298:14
presence 128:19
 128:25 157:25
 182:24 220:22
present 3:11
 4:25 24:23
 25:13 39:24
 40:15 43:20
 54:18 102:2
 112:17,21,24
 115:20 116:13
 132:4 138:12
 180:15 203:5
 268:22 406:9
 406:12
presentation
 175:21 268:21
 268:22 362:19
presentations
 362:6
presented 116:24
 117:19 153:15
 191:7 333:24
 376:2,10
preserve 393:11
 394:2
preserves 393:22
 398:21
preserving
 161:15
president 39:6
 39:11 108:19
 110:9 115:7,15
 301:5,13,13,17
 350:17 351:4
press 39:25
 40:11 52:9,24
 53:8,13 75:2

112:22,23
 125:9 133:25
 135:15 173:22
 195:22 209:18
 209:24 210:18
 211:3,16
 213:25 241:22
 281:3 314:21
 320:4 327:21
pressed 338:6
pressing 184:23
 346:22
pressure 300:10
 300:13 301:18
 301:22 302:6
 347:23
presume 83:22
presumed 318:5
presumption
 404:7
pretenses 384:10
pretty 132:11
 147:16,17
 152:22 159:17
 211:12 217:23
 223:18 224:11
 244:16 299:6
 377:14
prevalent 10:19
prevent 79:15
 253:22 254:4,6
 289:8,9
prevented 77:11
 77:15
previous 339:13
previously 16:17
 222:2 304:24
 320:24 387:3
primarily 15:23
 21:8 22:5
 136:11 177:18
 191:5
primary 14:24
 15:4 148:10
principal 10:11
 44:16 204:24
 230:5 356:21
printed 49:21
 304:10 382:15
prior 15:25 21:5
 26:10,13,17
 54:22 86:17
 87:8 99:14
 130:7 170:18
 215:25 233:10

252:12 287:4,7
 334:25 336:13
 339:5,6 342:4
 356:25 365:13
 385:13
prioritize 5:21
private 4:5 40:7
 147:14
privately 151:23
privilege 7:5,9
 7:13,15 83:8
 83:14 84:6,9
 84:11,16 85:7
 85:22 86:2,15
 87:15 308:21
 328:23 329:7,9
 361:6 393:22
 394:2,10,24
 395:5,8,12,20
 395:24 396:6
 396:15,21,22
 397:3 398:2,22
 399:2 400:11
 400:12,16
privileged 84:18
 84:19 86:6
 145:15 146:17
 160:5,7 219:18
 220:23 307:24
 314:7,9 315:14
 315:22 317:18
 318:12 319:13
 320:10,17,22
 325:17 326:19
 339:8,14 340:9
 341:5 345:18
 347:10 359:18
 359:21 361:3
 373:13,15,16
 374:3,6 386:6
 387:8 388:6,10
 407:17
privileges 323:4
 400:18
pro 380:11
probably 25:9
 29:17 158:3
 159:18 163:12
 188:2 197:22
 218:21 228:14
 229:18 231:16
 233:12 257:11
 272:13 274:6
 286:20 291:24
 319:7 323:19

328:21 347:13
 383:7
problem 64:4
 228:20 240:14
 243:10 257:22
 276:18
problems 230:16
procedural 33:16
procedure 76:18
 103:4,14
 104:22,25
 127:2,7 152:10
 154:22 367:22
 384:16,22
 385:5
procedures
 144:19 152:16
 273:24 363:21
 366:16 367:6
proceed 5:5 7:18
 106:24 313:24
 316:21 392:23
proceeded 151:12
proceeding 83:6
 83:12,17 99:3
 136:12 162:4
 162:21 170:19
 171:5 250:7
 257:13 265:5
 314:20 320:6
 322:10 386:19
 386:20
proceedings 44:6
 98:25 136:9
 246:15 322:13
 360:4 362:25
 385:15
process 34:3
 36:23 44:17
 60:3 76:15
 79:24 88:22
 110:2 116:2
 126:20 127:10
 133:13,17,23
 134:2,13,18
 151:5 152:4,5
 155:10 172:16
 175:16 176:4
 180:3,22
 182:14 193:22
 196:5 211:19
 229:11 252:22
 261:9 262:7
 266:18,19
 267:21 270:9

273:14 275:6
 277:22 278:7
 280:12 281:18
 282:13,15
 331:9 337:16
 362:12 365:11
 366:19 372:2
 377:24 389:5
processing
 323:17
procurador 39:20
 40:8 314:23
 333:13 338:5
produce 82:21
 84:3,3 90:23
produced 9:25
 12:9,13,13
 13:2,5 67:16
 82:18 89:14
 141:7 304:8,10
 304:18 323:19
 353:22 372:12
 378:14
production 12:4
 12:24 82:23
 83:4 85:4
 86:17 87:24
 89:14,18 90:14
 304:14,19
productions
 52:11
productive 233:7
 233:7
profession
 193:21 349:16
professional
 1:20 53:12,16
 67:24 71:19
 72:7 91:22
professionals
 189:17 200:2
 289:10 390:10
professor 245:6
 254:23 367:5
program 187:6
 197:3 254:25
programs 298:4
progress 364:19
prohibition
 182:6 183:6
project 12:22
 72:22 352:21
projects 186:12
 211:2 299:4
 352:20

promise 203:7	153:16 163:5	purpose 23:16,20	168:11 174:11
promised 200:8	166:19 276:22	26:11 32:3	220:4 221:16
202:19,22	291:14 374:22	34:17 49:9	240:2 251:8
promises 206:5	380:25 407:22	50:14 51:18	258:8 259:13
391:4	408:3,17	55:15 59:2	273:6 279:14
promotion 376:8	provides 145:10	73:23 81:19	281:20 286:6
promptly 181:18	355:15	139:6,13,21	294:16 295:4
190:19 191:16	providing 52:24	160:16 202:14	295:14,25
pronounced	59:4 120:24	202:15 245:8	296:14 297:10
254:17	143:6 154:14	300:17 301:15	306:3 308:10
proof 401:21	155:6 187:2	337:15 406:2	308:14 309:10
402:8	295:16,21	purposes 84:14	310:23 311:3,4
proper 77:23	369:23 382:7	204:19 328:5	311:7,10,13
187:11 199:24	407:23	397:25 402:2	312:8 319:23
246:17	proving 122:12	407:18	323:8 325:19
properly 265:4	provision 191:23	pursuant 1:16	325:22 328:19
proposal 191:9	provisions 356:3	6:21 9:15,17	331:2 333:22
204:18,20	public 1:21	86:18 102:21	347:16 374:16
205:16 247:18	42:15 52:9	146:12 151:25	380:5 383:7
329:19	53:13 133:22	178:3 307:6	384:3 387:15
proposals 299:24	135:3,4 166:8	315:23 316:5	390:7 391:17
propose 249:5	195:22 212:14	pursued 338:6	391:19 397:21
proposed 116:14	225:7 242:12	pursues 350:2	401:8 402:19
116:18 189:4	270:4 274:4	pursuing 59:2	403:3,16
190:15 192:22	281:7 305:2,19	put 50:13 87:25	404:12 407:21
192:22 193:14	312:25 317:23	95:7 153:3	questioned 269:4
217:6 307:21	318:5,8 384:5	163:17 216:2	questioning
366:10 367:10	409:11 411:4	220:6 234:22	220:19 253:16
367:11	412:25	235:3 238:2	258:25 289:8
proposing 248:20	publications	241:20 243:14	399:17 405:7
275:2 299:13	352:9	251:2 281:13	questions 9:19
proposition 8:16	publicized	298:16 300:10	117:18 129:11
proprietorship	298:10	301:17,21	207:18 258:2
20:21	published 298:10	315:24 320:3	259:2,16 367:2
propriety 333:3	298:20	329:6 341:20	367:14 377:17
prosecuting	pull 90:7 153:2	347:22 352:9	392:6 393:2,5
247:21	372:5	374:9 404:2	401:19 402:13
prosecution	pulled 153:11	puts 206:15	404:13 407:13
34:10 328:2	214:11	putting 111:9	407:24
prosecutor 326:6	pulling 221:15	161:3 245:11	quimby 2:13
prospect 106:21	263:24	263:14 264:2	quit 388:25
protective 13:12	purchase 226:3	302:6 334:8	quite 148:18
13:16,21 66:16	purchased 72:10	puzzling 191:11	286:22 363:24
81:9 410:9	purport 166:5	pyramid 125:14	quito 55:11
protests 300:14	265:20,20		61:22 62:5,10
prove 402:13	purported 185:13	Q	quote 122:9
provide 36:19	189:21 269:16	quarter 402:15	206:11 209:16
75:17 93:6,14	272:21 307:21	question 7:14,19	312:9 347:24
144:9 152:7	purportedly	38:2 40:25	361:25 378:21
169:9 290:9	155:22 226:9	70:2 71:15	
375:12 381:24	purporting 102:7	127:17 133:18	R
405:14 407:12	185:4	134:11 144:24	r 2:2 3:2 177:2
provided 93:23	purports 13:5	145:3,7 154:7	rainforest
113:23 116:20	332:25 349:21	157:9 162:24	351:18,24
119:15 152:15	358:25	164:16 168:8	352:10,18,25

raise 7:15 257:5
 257:9,16
 394:13
raised 70:2
 162:22,23
 182:18 187:25
 189:11 198:7,8
 228:22 241:25
 328:23 339:5
raising 191:21
rakoff 41:11
 99:5
range 100:19
 197:17 228:7
 300:14 355:16
 356:9
rate 370:21
raul 27:25 28:15
raw 265:8,8
reach 186:5
 187:17 198:2
 348:15 351:3
reached 204:23
 206:12 207:6
 207:21 208:18
 210:2 228:6,12
 233:5 236:3
 237:23 249:23
 361:13 403:8
reaching 173:13
 200:17,18
 202:13 306:25
read 13:16 22:13
 149:25 221:18
 270:5 271:3,6
 297:9,13
 310:22 312:7
 319:23,24
 331:2,13
 346:25 374:16
 387:15,16
 388:10 398:11
 398:12
reading 248:2
 303:13 321:17
 337:3 368:17
reads 42:2 48:7
 263:8
ready 408:15
reaffirmation
 380:3
real 302:2
realize 285:23
really 38:18
 44:3,10 51:16

80:15 107:15
 110:16 138:21
 142:11 161:11
 164:2 169:11
 175:11,25
 183:4 191:25
 213:14 232:9
 243:10 244:5
 281:17 294:5
 339:25 340:12
 357:8 397:10
 401:23
realm 118:20
 193:23
realtime 133:5
reason 12:25
 13:7 19:17
 21:20 51:19,22
 73:13,15
 118:20 140:2
 142:12 185:20
 233:17 294:9
 333:21 356:19
 379:25 394:12
 401:16 412:6
reasonable
 279:10 329:19
reasonably 221:8
reasons 55:19
 121:17 179:24
 179:25 184:25
 231:12
rebatesstamped
 83:4
rebuffed 311:25
rebut 178:12
recall 16:8,9,11
 20:14 23:9
 28:12,13,14
 29:3,7 33:14
 33:15,24 34:11
 35:22 40:6,17
 40:24 41:10
 46:17 50:17
 54:7,10,12,13
 54:22 57:8,12
 61:11,12 62:6
 62:16,19 68:15
 73:10 77:16
 78:20 80:18
 95:16 98:12
 105:11,20
 106:12 111:3
 120:16,19
 121:13 127:22

131:25 133:3
 136:18 143:7
 148:6 150:5,16
 150:20,23
 153:19,20,21
 153:22 155:15
 156:3,14
 157:10 159:12
 159:25 162:5
 168:6 170:9
 181:24 182:5,9
 185:23 198:5
 208:20 216:9
 225:25 231:20
 232:23 238:24
 241:19 242:9
 254:22 257:3
 260:20 288:8
 291:10 301:2,3
 301:14 303:4
 320:4 324:16
 325:13,19,20
 325:22 327:7
 331:14 332:8
 332:14,21
 334:17 350:8
 352:3 365:14
 365:25 366:2
 366:12 367:15
 369:3 371:20
 372:20 373:5,7
 376:20,24
 388:21 397:5
 408:6
recap 267:12
receipts 65:6,11
 95:12 228:2
 371:9
receive 102:22
 104:11 135:5
 154:23 162:8,9
 179:19 190:7
 214:5 298:12
 324:8,21 372:8
 372:11
received 65:4
 97:13 151:18
 155:12 157:13
 198:8 200:4
 202:6,25
 204:22 214:8
 266:23 284:9
 284:11 320:7
 333:16 349:6
 361:21

receiving 73:12
 111:2 120:16
 120:19 150:5
 150:16,20,24
 197:12 361:7
 371:20
recess 87:2
 176:12 258:19
 330:21
recited 197:14
reckless 350:22
recognize 140:24
recognized 59:9
 217:3 394:25
recollect 327:16
recollection
 32:12 34:13,18
 36:8 51:9,15
 53:5,24 56:9
 58:4 68:11
 69:15 72:23
 73:7 75:10
 76:8 103:7
 106:15 107:2,8
 107:13,19
 112:10,12
 120:3 130:6
 131:8,14
 132:12 133:20
 142:8,13 165:6
 169:18 178:24
 190:14 197:15
 206:9 207:15
 217:11 220:14
 223:21,24
 228:5 244:12
 244:16 257:10
 298:13 300:2
 301:8 312:2
 314:4 316:9
 317:20 324:11
 332:7 348:3
 352:5 357:22
 371:23 375:14
 375:21 377:12
 387:19,22
 390:12
recollections
 78:22
recommendation
 118:15 119:19
 292:5,12
recommendations
 118:19 290:16
recommended

55:25 195:25	228:8 250:5	151:5 219:11	64:16 66:19
292:2	262:5 281:24	285:25 377:3	68:8 94:8
recommending	referenced	393:2,10	105:13,15
250:7	135:23 169:4	regardless	113:21 114:20
record 4:3,10	247:11 359:24	164:16	179:12 189:5
6:13,16 48:6	referencing	register 181:14	198:6 201:22
63:12 67:14	227:20	182:2 183:3,7	253:25 298:8
86:25 87:4	referred 18:18	185:15,21	299:11,20
91:8,19 96:8	24:4,18 92:11	registered 1:20	332:6 334:4
97:22 134:21	107:20,22,25	171:22 181:9	352:10 411:12
135:11 143:25	152:18 233:12	181:11,21	relates 52:17
176:11 177:6	262:3 280:20	182:22 183:24	241:5
204:6 221:18	291:8,16	184:22 185:17	relating 33:4
222:3 258:18	293:22 375:20	349:24	35:8 65:23
258:21 262:17	referring 21:16	registering	76:8 80:5
263:8 265:6,12	21:17 24:7	181:3 182:7	82:10 83:7,13
273:2 281:15	32:14 37:14	183:6 184:15	170:15
297:13 310:2	61:24 133:19	184:16	relation 51:3
319:24 321:21	141:14,17	registration	53:23 187:23
330:20,23	143:4 153:17	182:16	relations 52:9
331:13 337:12	189:19 199:14	regular 11:20	53:9,13,14
363:4,12 364:7	225:13 248:6	32:21 43:15	147:20 177:19
384:5 387:16	283:20 284:22	227:18 371:12	179:12 195:22
397:10 409:2	288:23 292:3	403:18	212:14 225:7
411:10	293:3 295:2,15	regularly 10:7	281:7
recorded 232:13	333:9 336:18	10:10	relationship
recording 4:9	339:4,6 359:8	regulating 193:6	38:3,6 99:15
records 11:7,20	391:14	regulations	170:19 171:8
11:24 37:6	refers 152:19	178:3	171:14 188:8
50:11 87:13	refiling 98:17	rehabilitation	199:11 209:15
93:11,20 258:4	100:11	197:3 297:23	210:2 211:13
258:11 263:13	reflect 321:22	reimburse 122:4	228:21 229:23
272:2 282:16	reflected 157:12	reimbursed 94:21	231:5 234:11
372:5 378:15	reflecting 65:13	217:9	237:9 238:4
383:17	reflection 49:13	reimbursement	239:5 240:25
recovered 92:14	reflects 94:14	18:16 92:8	256:22 297:18
recovery 189:6	94:19 96:20	370:9	355:22
194:16 197:13	reforestation	reimbursements	relationships
202:25 235:10	266:10	95:3 384:4	178:17 230:19
237:16 292:23	refresh 51:14	reinstated	relative 22:8
recreated 309:23	83:17 107:13	326:10	42:19 52:25
redress 297:22	142:8 216:8	reinvolve 139:23	55:21 110:5
reduce 194:16	317:20	reis 319:3 325:4	140:12 142:23
279:9	refreshes 193:13	325:14 326:7	178:9 212:8
reduction 168:15	refunded 97:11	326:17 327:6	215:23 243:22
191:18	97:16	328:3 335:7	298:5 331:20
reengage 143:15	refusal 249:13	reiterate 282:5	333:2
refer 32:8 58:19	290:8	reject 296:7,8	relatively
134:14 207:23	refusing 241:7,7	rejected 232:12	190:19
208:6,13	regard 51:18	relate 22:19	relayed 114:21
271:23 381:6	197:24 249:7	32:24 105:25	200:24 201:20
reference 130:2	256:5 276:3	106:8 300:2	276:10
141:11 154:16	308:15 384:13	related 11:15	relaying 103:10
169:25 175:8	regarding 87:8	16:6 18:12	release 52:24
189:14 194:8	106:3,10 121:3	26:17 27:16	210:11 211:9

335:12,20
336:4
released 210:19
383:9
releases 133:25
209:18,24
210:18 211:3
211:16 241:22
320:4
relevant 168:10
259:18
relied 118:18
274:19 281:10
relieve 395:4
remained 230:23
363:25
remaining 109:9
397:21
remains 330:12
remand 99:5
remarks 9:14
remediation
187:5 263:18
264:2 275:7
331:21 333:5
335:11 336:3
remedies 59:3
remedy 367:24
remember 24:16
24:17,17 29:14
31:17 34:8
36:3,8 37:12
77:19 78:5,7
106:6 112:15
112:16,21,23
112:24 115:17
119:2,20
130:18 133:7
142:20,21
143:4 147:23
147:24 153:5
156:10 184:6
185:5 202:9
208:11,14
216:4 218:8
226:5 245:18
251:10 260:12
302:21 303:3
317:2,7 320:2
326:11,12
331:19 332:3
333:6 334:21
334:22,22
337:11 361:7
361:18,24

366:6 374:15
388:22,23
390:15 391:12
remembering
151:4
remit 373:20
rent 369:17
reorganized
387:24
repeated 240:21
repeatedly
225:15 228:22
235:16 249:23
rephrase 123:4
150:15 315:21
377:4
reply 256:15
report 130:25
131:15 148:11
148:16 151:8
185:6 242:22
264:16,20
265:23 266:12
267:3,20 268:5
269:17,21
270:3,6,6
272:21 273:2
274:11 276:2,4
277:6,17,20
279:3,21 280:2
280:14,20
283:5,11,15,16
286:14 290:10
291:7,14 294:3
294:13 295:7
295:18,23
297:6 333:2,10
333:16 336:25
338:4 340:5
342:8,9,22
343:2,13,15,16
343:18 344:3
368:11 373:17
373:17
reporter 1:20
5:3 45:4 96:18
319:23 339:19
349:20 381:8
381:10,14
reporting 75:17
412:1
reports 267:9
273:9 281:5
290:16 298:14
371:3 372:8,12

376:17
represent 5:2
42:5 78:2 98:2
158:13 225:21
408:11
representation
42:8 70:21,24
98:16 158:14
215:8 292:22
357:13,14,21
363:15,20
representations
154:8,11
156:12 157:2
166:22 366:9
376:25
representative
89:16 137:6,8
137:13 155:22
177:21 179:13
179:17 180:19
representatives
23:24 25:6,10
88:6 101:21
137:16 208:23
243:11 346:3
represented 6:23
27:15 61:13
110:18 126:18
172:7,20
187:24 201:14
202:21 205:8
336:19 362:14
representing
4:12 5:4 27:12
151:19 152:14
198:20 202:8
215:13 317:13
324:17
represents 323:3
reproduced 83:3
republic 27:11
27:12,15 28:22
31:16 32:6
33:3,11,23
34:5,16 35:7
35:25 40:13,21
41:5,15,16
124:16 179:22
180:13 181:7
306:8,11,16,24
307:8,17
312:23 313:16
313:22 315:5,9
316:4,15,23

317:4,10 351:4
reputation 325:8
request 41:21
94:2 120:17,20
140:9 149:16
226:7 239:8
278:17 333:20
337:5 344:5
346:2 355:10
374:25 376:16
382:16 383:5
requested 12:12
92:25 93:3
114:11 139:8
159:23 312:15
333:8
requesting
177:25 205:12
211:15 227:10
344:21 402:18
requests 40:19
41:13 119:6
126:21 240:21
282:9 312:20
410:22
require 385:6
required 103:13
126:23,25
127:4,6 134:18
313:3,19 407:6
requirements
146:23
reread 221:16
398:21 401:2
reregister
183:16
reregistered
183:20
research 37:4
79:11 172:12
193:5 407:7
reservation
392:20
reserve 398:9,11
reserves 5:23
resides 53:21
349:14
resigned 160:13
resisted 245:14
resisting 78:13
resolution
190:18 192:8
200:12 255:12
279:18 300:20
359:3 366:22

resolutions	309:17 355:18	142:19 267:24	60:21 72:4
359:25	355:23	rid 302:4	75:8 109:15
resolve 278:3	results 78:10	rift 357:11	114:3 115:19
302:10	79:6	360:5,18	195:21 196:10
resolved 191:15	resumed 177:4	right 5:16,24	196:12,25
337:24 378:20	retain 158:13	10:25 16:15	286:10 362:2,3
respect 40:25	retained 18:23	30:11 56:25	364:12,15
42:17 68:6	56:2 140:10	67:11,12 70:4	365:8,15
75:14,18 87:13	181:7 184:4	70:8,9 71:10	romance 235:22
129:12 144:2	197:21 263:22	81:19 86:23	room 4:25 40:16
146:24 178:14	355:5	89:5,5 92:19	132:2 133:10
182:10,11	retainer 66:6	94:22 96:24	159:21 220:2
200:25 201:4	161:16 256:14	97:6 104:9	221:11 251:2
212:13,13	256:14	105:24 110:13	308:7,8 311:11
215:25 248:12	retention 47:18	115:4 116:21	319:16,21
288:2 307:21	98:10 99:17	117:15 125:22	320:13 321:4
316:11 335:10	195:5,11 247:4	129:18,22	326:22,24
353:3 367:18	254:9	133:14 134:17	327:11,12
395:12 396:11	return 320:13	138:6 141:22	330:7 386:16
respectful 240:9	388:8 404:19	144:18 153:7	387:13 388:8
respectively	returns 221:11	153:14,23,24	391:13 392:15
305:4	311:11	156:23 167:11	398:7 401:20
respond 7:13	reveal 160:4	177:11,14	402:7,11
145:13 161:13	revealing 385:16	179:14 181:5	404:19
163:16 178:12	revelation 174:3	188:20 203:4	rough 275:19
210:3	229:11	204:7 227:22	roughly 23:9
responded 145:18	revelations	232:22 233:4	83:18
161:8 162:5	147:7 289:24	233:24 235:19	routine 374:3
163:10	review 65:10	236:10 246:18	404:3
response 12:5	85:3,4 154:23	248:22 256:8	rudimentary
13:3 144:6	204:13 209:20	262:15,21	278:5 366:14
169:2 173:19	211:16 214:13	264:4 265:2,3	rule 145:17
257:20 258:8	262:16 264:9	280:13 295:12	188:5 200:22
276:11 280:3,6	265:3 298:8,18	307:10 311:10	255:19 313:20
283:6 284:7,13	299:15 302:13	314:12 323:21	400:13 404:6
314:6 374:24	394:18	329:17 336:17	ruled 320:16
375:7 386:4,12	reviewed 211:7	344:6,10,17	395:15 397:4
responses 407:13	383:23	357:16 358:17	399:4 400:18
responsibilities	reviewing 69:20	365:21 372:25	400:19
177:17	210:17 263:12	388:4 398:11	rules 8:18
responsibility	266:20 371:16	398:22,23,24	172:18 367:8
68:6 69:20	396:21	400:13	ruling 7:16,18
115:20	revocation	rights 15:13	8:15 87:24
responsible	363:14	35:13 161:16	89:16 90:4,5
114:19	revoked 363:9	304:25 305:14	248:9 259:2
responsive 314:9	reyes 73:3,4,6	392:20 398:9	328:14 396:20
rest 387:7	73:17 260:9	400:11	399:6,14
403:17	ricardo 319:3	rise 75:12	401:10,12
restaurant 34:22	rice 164:10,11	risen 103:17	403:23 404:9
54:16	215:15,16	roadblock 246:20	404:11
restructuring	216:14,15	rode 165:10	run 275:20
216:21	218:5,10,20,24	roe 32:19 36:19	331:12 370:19
result 114:14	257:2,6,17	326:15 351:16	running 175:11
139:10 240:13	258:4	role 22:4 30:19	234:10 283:3
290:19 292:23	richard 25:22,25	43:14 44:14,15	389:14

runs 49:21
russell 56:12
 57:25 76:9
 168:4 388:17
 388:23 389:12
 390:11,14,17
russells 56:14
 56:19

S

s 2:2 3:2 6:5
 19:22,24 20:2
 20:12 26:20
 27:14 45:13
 53:24 79:8
 109:10,23
 117:24 136:7
 177:2,2,2,4,21
 179:13,16
 180:3,17,17
 183:3 185:11
 211:21 212:8
 212:11,15
 232:9 242:2
 254:24 281:9
 303:21 314:17
 317:11 339:22
 344:24 345:12
 346:6,8 410:6
 412:6
saenz 24:18,20
 24:20 234:16
 238:8,11,17
 239:14
salaries 118:12
 118:17,22
salary 110:12
 111:2,6 114:7
 114:9 117:7
 119:7,12
salazar 321:10
salvage 166:10
 292:10,23
sam 186:8
san 75:5
sand 29:10 34:20
sat 159:21
saturday 149:14
saved 389:22
savings 379:3
saw 22:25 63:7
 68:17 111:15
 111:22 112:20
 117:6 128:25
 129:13 174:4

210:9 218:3
 232:4 260:18
 279:17 333:23
 339:2 365:7
 370:7
saying 106:7
 121:14 127:20
 128:24 160:2
 160:19,20
 163:10,23
 166:17 167:21
 170:4 172:2
 175:24 185:5
 204:4 227:13
 230:24 233:6
 235:25 242:19
 261:7 271:23
 324:19 325:23
 334:18 336:14
 345:9 375:23
says 49:16 51:13
 51:25 52:10
 66:15 97:2
 141:6 144:17
 172:4 205:18
 220:12 248:8
 250:6 264:3
 284:6 309:21
 338:21 339:24
 342:3,4,8
 343:17 344:7
 344:13 345:4
 347:2,18
 350:14 373:20
scandal 241:24
 254:3
scenarios 151:6
scene 341:10
schedule 51:13
 139:18 212:24
 217:16,17
 232:15 238:13
scheduled 232:17
 337:13
schedules 97:7
 232:25 245:19
scheduling
 232:21
scheme 256:15
school 14:5
 138:23,24
 254:24 365:2
scientific 79:11
scope 305:25
scott 131:12

scratching
 238:21
screen 310:23
 320:15
screwed 376:4
 387:25
scrivener 210:11
se 61:12 65:3
 336:11
seal 329:4,12
 330:10 339:11
sealed 319:17,18
 328:20 329:4
sealing 331:9
seat 161:6
seated 5:15
sebastian 75:5
sebastians 75:8
 75:20,24
sec 302:23,25
second 54:19,20
 62:20 72:25
 90:2 99:4
 106:20 128:17
 156:21 157:8
 157:23 162:14
 193:4 204:15
 222:15 271:9
 277:25 283:14
 312:18 313:17
 313:21 315:18
 315:20 317:21
 317:23 322:19
 373:9 374:18
 376:5,15,21
 377:6,22 378:4
 378:17 379:23
 386:8
secondary 22:8
 248:25
secondly 187:2
 212:20 250:19
 377:11
secoya 354:11
secret 147:15
 268:5,9,14
 297:7 378:17
 378:21,23
secretly 274:10
secrets 132:15
 289:7
section 66:17
 89:11 311:22
sector 305:19
 312:25

securities 15:7
 302:15 303:21
see 17:7,14
 22:21 49:23
 51:24 52:12
 53:17 56:20
 58:16 63:23,24
 64:8,11 66:3
 67:20 68:2
 73:4 75:6 79:8
 91:23 95:24,25
 96:2 111:13,20
 112:3 122:24
 123:6 135:10
 135:11 142:11
 142:15 145:2
 151:15 152:20
 157:8 175:7
 205:4,25
 206:17 213:15
 213:16 221:13
 223:14 228:7
 234:23 237:2
 248:5 267:17
 267:22 272:14
 278:3 284:20
 284:21 290:25
 292:9 293:12
 294:16 302:24
 304:3 305:22
 306:13 309:7
 313:4 320:15
 322:6 324:12
 325:11 330:9
 337:15 338:19
 339:15 340:2
 342:2 344:11
 347:15,16
 350:24 352:25
 355:25 358:4
 369:19 374:11
 374:13 375:16
 379:20 382:23
 401:2
seeing 62:6
 112:10,12,21
 150:21 211:3
 327:8 328:3
 341:8,22 343:6
 343:6,11
seek 33:20
 251:23 258:4
 313:9 396:24
seeking 32:10,11
 77:18 122:3

275:2	147:7 158:17	186:13 231:13	192:2
seen 17:12,15,17	161:14 197:9	341:10 380:19	show 47:2 123:12
47:25 48:11,13	217:19 218:4,6	settle 301:18,22	140:17 240:4
48:18 111:18	221:20 223:18	337:25 346:20	246:21 294:18
111:22 112:6	223:19,21,22	347:23	303:10 324:14
128:19 135:8	223:25 227:25	settled 325:10	showed 344:2
170:14 173:23	228:3 233:6,15	settlement	showing 66:22
173:24,25	284:6 338:5	178:20 195:17	73:3 404:2,6
185:25 210:22	342:23 344:4	197:2 205:2	shown 63:6 70:16
262:4 302:17	345:12 372:16	213:7 255:13	73:11 135:4
326:24 327:14	383:10	279:11 302:12	332:24
327:17 348:3,4	sentence 284:7	337:16 355:19	shows 94:23
349:2	separate 42:8	355:24	340:14 348:2
selected 91:8	45:25 62:7	settling 338:7	378:15 383:18
selecting 214:19	91:21 92:17	setup 132:3	shuffle 163:3
selfevident	95:2 105:17	174:13 343:7	side 88:9 195:25
327:23	156:24 229:19	seven 109:3	sides 79:6,10
selva 61:19,25	242:2 266:11	399:22 402:15	90:15
64:2,2 65:4	268:19 299:3	sevenhour 403:20	sign 211:11
66:7 74:10,12	306:12 323:25	shaking 308:12	264:21 274:11
74:14,24	353:23 355:5	shape 62:22	308:18,22
110:15,17,24	355:12,13	214:10 408:13	signatories
111:2 114:8,25	399:21 400:6	share 162:10	126:10
115:8,16,21	separately	170:21 194:12	signatory 98:15
116:13,18,20	140:16 242:19	407:2	126:7
117:19 119:11	separation 389:2	shared 151:5	signature 13:19
125:20,25	september 23:14	172:24 253:9	20:18 305:7,8
126:5,12,14	23:21 24:15	shareholder	305:8 309:3,7
227:10 368:10	25:21 249:18	30:24 300:15	309:15,22,24
368:24 369:22	280:7 350:19	300:16 301:7	354:4 358:2
371:18,20	371:19,21	sharp 193:15	signatures
372:16 375:9	373:10 374:19	sheet 412:1	102:15,19
senator 186:8	376:16	sheets 93:7	signed 102:7
send 152:9	sequence 169:19	shinder 167:16	189:8 190:17
168:12,16	series 48:17	167:18 168:25	191:12 192:24
222:22,25	143:19 180:6	169:21	197:10 308:25
223:16 237:24	226:10 234:3	shindler 167:15	309:13 310:4,5
243:12 278:16	240:13 243:7	169:21	358:5 369:9,10
321:4 370:25	246:10 300:14	shipped 76:12	significant
sending 147:9	serious 196:20	shipping 343:13	238:2 365:19
284:4 346:16	served 6:21	372:6	signoff 210:5
sends 381:8	87:15 214:8	shocking 289:23	signs 108:2
senior 30:3	328:4	shoes 145:21	silence 398:7
186:18	services 52:24	163:3,15	silly 276:13
sense 21:18 46:6	53:17 59:5	shook 160:23	similar 36:12
57:9 74:3	187:10	shopping 171:15	62:23 97:7
153:9 163:12	session 23:25	short 124:3	121:21 132:2
175:2 183:2	268:16 320:3	144:16 207:13	217:16 230:16
218:12,18	set 99:15 114:9	244:24 258:14	239:18,19
226:14 238:16	229:4 241:7,8	302:5	293:6 352:16
361:12,14	245:22 304:21	shorter 281:4,4	simple 152:25
372:7 376:3	311:2,20 312:4	shortly 23:3,3	155:3
sensitive 4:4	316:6 370:21	90:13 150:24	simply 10:15
sent 19:3 136:4	411:8,16	179:6 384:18	15:20 18:23
139:11 146:25	setting 118:12	shouldnt 191:22	20:20 25:4

94:2,4 152:8	smoother 331:12	116:9 118:9	spaces 73:17
161:15 216:19	smyser 251:17	128:13 134:4	spanish 16:21,22
231:6 290:22	social 40:16	138:21 141:16	16:24 22:11,13
308:10 310:24	socializing	143:7,8,16	40:3 41:24
333:20 344:24	102:3	148:17 152:4	42:3 107:21
354:24 374:25	sofia 138:11	161:9 162:14	118:11 138:17
385:7 395:22	149:15	162:24 170:15	138:23 150:17
single 43:11	sole 10:11	170:22 171:6	223:22,25
266:5,6	solely 215:23	171:18 174:16	224:9,12 256:2
sir 13:24 19:19	237:11,12	174:17 186:12	271:12,20
26:23 41:19	solid 339:25	191:7 196:4,24	272:7 309:4,15
47:9 63:20	solomon 230:14	197:7 198:7	309:16 310:5,6
66:20 91:16	230:14	200:9 210:15	353:13 359:12
99:11 157:6	soltani 410:12	211:12,22	spanning 332:3
385:11	solve 240:14	212:15,24	speak 22:11,15
sit 52:15 97:5	347:13	213:5,12 217:8	118:6 138:17
111:24 199:23	solved 240:15	226:6,18 227:9	138:19 159:25
232:9 257:18	somebody 89:9	228:6,9 229:10	167:17 200:6
288:17 302:19	175:25 185:10	229:20,21	speaker 173:11
318:13 371:22	188:14 333:20	230:25 231:2	233:13
383:13 395:22	343:13,22	231:14,20	speaking 17:5
sitdown 229:19	362:16	232:3,13,25	118:4 135:24
site 78:16 82:23	someplace 133:6	234:8,19	143:8 144:4
88:3,10,14,19	somewhat 21:13	235:11,19,21	171:24 180:16
89:5,7 128:20	169:12 191:11	237:5 238:25	287:14 338:21
129:14 132:10	212:21 218:14	239:4 244:23	speaks 41:24
sites 37:3	228:7 234:6	250:17 254:25	307:12 308:17
situation 78:8	298:24 351:21	271:15 272:16	312:5 392:21
173:8,9 184:21	351:21	274:19 277:25	special 3:12,13
188:16 238:23	son 38:7	281:21,21,22	5:14,15 7:16
276:8 300:4	soon 256:22	286:15 287:23	7:21 19:15
353:3 390:15	sorry 6:18 9:7	288:11 301:21	44:25 45:9
408:5	26:6 44:22	332:25 336:23	47:5,13,20,24
situations 210:4	63:17 64:6	342:18 343:4,6	60:17,25 61:4
257:24 383:22	67:5 83:9	349:17 350:10	61:9,18 63:17
390:8 391:3	92:20 127:3	353:5 360:16	63:25 64:17,24
six 213:4 226:11	146:4 150:9,14	360:17 361:18	65:18 66:12,21
227:12 228:6,9	154:6 158:19	367:13 368:3	67:5,7,12,15
319:8 368:20	208:4 224:21	370:3,15	67:17 70:10
sixmonth 116:3	248:3 279:23	390:16	80:25 81:15
size 267:3	293:10 294:23	sos 296:25	82:3,14 83:5
sketchy 213:18	308:23 309:6	sought 312:21	83:11,16,21
slice 194:17	316:20 353:25	sound 262:21	84:5,10 85:12
217:14	395:25	sounded 226:13	85:16,19 86:4
slight 69:15	sort 10:24 21:7	sounding 312:3	86:11,19,22
slightest 395:20	21:7 33:15	sounds 90:10	87:6,10 88:7
slightly 291:4	38:4,10 42:18	219:20	88:13,18,24
312:11	44:13 51:3	source 216:23	89:4,8,20,25
sloppy 290:23	58:21 62:15,22	sources 71:13	90:8,12,24
slow 144:5	63:6 74:9,15	south 8:8 255:6	91:5,9,12 96:7
small 173:4	74:20 75:11,16	southern 1:3	96:16 108:7
smaller 10:12	76:14 78:21	4:21	111:12,19
89:10 101:20	102:3 103:21	space 62:23 63:5	112:2,11
smiling 400:6	105:11 110:12	63:9,10 357:23	123:20 124:19
smooth 166:9	112:16,17,18	369:24	145:2,6,16

146:6 150:9	50:18 51:8	spokesperson	140:11 141:19
156:20 157:7	53:5 56:8	60:23 125:18	165:21 287:9
157:22 158:5	60:12 78:6	sponsored 68:22	375:8
160:6,12,17	107:8 119:21	sporadic 370:13	statement 6:16
176:8 193:3	127:17 133:3	spring 142:17	84:12 146:8,12
204:3 219:19	134:10 135:5	213:14 218:22	182:25 221:23
219:25 220:8	156:21 168:8	249:17 385:13	241:2 267:6
220:20 221:12	182:23 198:9	387:18	275:18 276:14
251:5,16,19,22	206:10,11,24	square 3:4	290:5 380:12
251:25 252:6	240:2 242:6	srd 52:10	statements
252:10,15,23	261:7 371:23	staff 50:12	147:25 148:7
253:5,11,18	376:24 390:15	379:25	153:25 174:6
258:16,23	406:19	stage 366:14	275:25 276:5
259:4,8,19	specifically	stairs 62:19	276:19 285:19
271:8,17 272:3	16:10 20:14	stake 325:5	293:8 379:14
272:11,18	21:21 64:15	stalin 25:22	states 1:2 4:20
273:4 274:13	133:11,13	26:2	76:12 109:6
283:23 303:24	164:21 185:5	stamp 66:15,18	139:13 151:3
304:17 307:25	207:8 248:4,6	66:24 81:12,13	205:22 212:3
308:5,9,25	267:11 286:5	stamped 12:17	305:21 312:19
309:8 310:16	396:9,17,19	81:18 82:7,16	318:11 321:15
310:22 311:8	398:13 401:3	82:18 204:15	325:4 333:15
311:12 314:8	specifications	stamping 81:13	337:6 339:17
315:17 317:22	386:21	stand 221:22	342:16 396:9
318:4 319:14	specificity	standing 103:16	stating 128:23
320:9,14,20	154:18 155:4	103:24,25	208:20 249:22
321:2,16,24	speculate 49:19	331:4	323:2 333:15
322:8,14,18,23	253:7	standstill	station 165:16
323:10,21	speculation	384:19	status 59:8
324:5 325:18	192:19 274:14	staring 341:21	statute 107:9
325:25 326:20	323:16 340:17	start 37:17	statutes 193:6
327:10,13,18	341:2 360:15	178:21 179:4	246:19
329:15,20	speed 236:16,25	198:25 282:23	stavers 2:10 5:9
330:5,17 331:7	spelled 190:15	337:7,16	5:9 67:14
338:24 339:7	spend 94:25	374:10 392:7,8	222:13 319:20
339:12 340:10	139:20 282:15	started 14:19	320:12 322:20
340:18,24	spending 360:11	63:21 77:8	323:12 387:12
341:6 343:24	spent 44:14 93:3	147:7 191:21	388:7 402:9
345:19 347:11	93:8 174:5,8	196:4 228:10	404:17
348:6,11,14	225:3 240:18	235:25 267:24	stay 87:25
359:19 361:4	256:17 268:17	343:8	stayed 82:22
373:14 385:10	298:22 299:19	starting 60:16	staying 54:14
386:7,13 387:7	spinning 76:15	208:9 257:12	step 392:14
388:4,9 389:8	spiral 371:4	286:21 407:16	stepdown 192:3
389:21 390:3	splitting 198:24	starts 76:14	steps 278:21
391:16,23,25	199:3	346:12	steptoe 202:10
392:8 393:14	spoke 59:16	state 1:21 6:12	202:12,20
396:13 398:10	155:20 163:21	19:17 94:6	203:14 205:7
399:20 401:13	165:12 167:9	224:23 225:12	207:11 208:4,5
402:6,12,21	198:15 242:7	228:19 240:17	208:17
403:10,25	316:18	284:16 288:23	steve 159:9
404:10,20,24	spoken 78:6	289:22 305:17	163:11 165:2
405:6 407:20	179:3 242:20	384:15,17	173:16
408:20	250:6 286:19	411:5	steven 1:9 4:19
specific 20:22	387:21	stated 131:25	91:22 203:23

205:17 207:16
 225:5,12,13,15
 228:21,25
 240:19 245:24
 245:25 321:8
 375:19 382:6
stipend 46:21
 92:12
stipulate 323:25
stipulated 89:11
 396:9
stipulation 8:14
 66:18,25 81:11
 90:20,21
 392:18,18
 398:12,17,21
stop 235:13
 240:5 346:6
 405:2
stopped 76:25
 388:24
story 213:15
 292:9
straightforward
 281:13
strategic 79:19
strategically
 290:17
strategist
 349:18,22
strategy 22:2,7
 46:15 113:9
 228:24 229:9
 313:13 316:16
 319:10 320:2
 347:20
stratus 136:12
 142:23 143:5
 144:3 147:21
 148:3,9,15
 149:5 151:13
 151:21 154:17
 162:3,21 169:5
 170:5 214:4,17
 262:20,24
 263:22 264:14
 264:20 265:17
 265:23,24
 266:2,21,24
 268:3,9,12,13
 270:10 271:7
 271:11,19
 272:6 273:8
 274:2,10,18,20
 277:4,5 279:24

280:9 283:9
 288:7,7 291:13
 294:2,4,8
 295:20 385:15
straw 250:17
strawn 27:19,21
 28:4,16 31:18
 241:14
straws 285:13
streep 235:22
street 2:8,13
 3:4 8:8
stretched 107:3
stricken 259:3,7
 259:22 314:10
 343:25
strictly 116:2
strident 213:10
strike 144:23
 146:5 253:19
 259:21 314:6
 343:23 391:19
 393:9
strong 172:15
stronger 107:7
strongminded
 299:7
strongwilled
 299:6
struck 259:10
 361:19
structure 125:19
structured
 194:10
structuring
 199:9
study 75:11,12
 75:13,20,24
 96:5 131:16
 407:7
stuff 132:8
 169:6 236:22
 274:20
stylistic 356:22
subcontractor
 272:16
subcontractors
 74:17 390:18
subissues 281:6
subject 34:9
 36:17 60:18
 66:15 81:9,10
 172:10,17
 220:21 229:16
 327:5 374:7

393:6 395:16
 401:10 405:7,8
 405:8 407:3
subjects 395:19
submission
 148:21 230:8
 245:12 263:16
 280:18 290:18
 302:14,20
 365:25 366:4
submissions
 272:24 302:21
 302:25 303:6
 367:25
submit 151:12
 154:24 263:7
 264:5 366:10
submitted 151:10
 151:20,25
 152:3 265:5
 266:13 267:10
 273:14 345:25
submitting 274:3
subparagraph
 311:21
subpoena 1:17
 6:21 9:6,7,15
 9:16 12:6 13:3
 402:3,3 403:13
 410:8
subpoenaed
 399:18
subpoenas 378:19
subscribed 409:7
 412:22
subsequent 41:7
 89:15 90:17
 201:3 207:3
 263:4 367:23
subsequently
 168:16
subset 24:8
 255:22
substance 188:12
 347:19 348:2
substandard
 77:22
substantive
 40:17 118:10
 356:23
subsumed 71:15
subvendors 74:17
succeed 35:12
success 204:18
 205:10

successfully
 358:10
successor 251:12
 315:2
sue 307:7 315:8
 316:6
sufficiently
 328:10
suggest 329:11
suggesting
 344:16 345:16
 345:21
suggestions
 287:11 407:12
suing 317:9
 338:3 385:3
suit 350:19
 403:6
suite 2:14 3:5
sum 347:25
summarize 381:6
summary 48:21
 49:4,6 51:23
 78:7 141:16
 200:24 241:21
 270:19,25
summer 226:6
 232:20 245:7
summons 384:22
 385:7
sums 240:18
sunk 217:3
sunset 191:23
supervise 43:17
 185:7 209:8
supervised 53:15
supervising
 184:9
supervision
 114:19
supervisor
 209:16
supplement
 117:17 297:14
supplemental
 210:12
supplies 369:19
supplying 210:12
support 36:20
 196:24 224:24
 312:10,14
supported 287:18
 297:20
supporting
 307:17

supportive 195:5	susmans 169:23	tackling 79:13	208:2,3 220:21
suppose 15:19	276:19	tactic 234:19	221:4 271:18
71:24 226:2	suspicion 138:22	tactics 79:20	276:13 277:9
324:20	402:24	tailed 353:5	279:9 338:25
supposed 65:6	sustain 273:4	tainted 134:3	341:25 343:20
supposedly 123:7	swear 5:5 100:18	take 18:18 33:13	taller 30:2
supposition	261:8	33:20,23 72:20	tape 176:7
56:18	swift 9:20,23	81:15 84:10,11	258:14,15
supreme 97:23	10:3,6 11:13	86:23 101:14	330:15
103:22	11:19 12:9,14	122:20 124:13	tapes 249:8
sure 22:24 23:13	14:10,14 17:22	138:4 147:5	targeted 301:16
25:18 27:24	19:21 31:9,12	149:23 160:9	targeting 300:24
36:5 43:11	43:8 44:19	176:7 217:20	team 44:11 56:4
65:11 98:9	45:11,18 46:19	244:6 252:21	57:10 62:2,7
129:23 134:11	48:22 52:3	255:25 258:14	75:9,19 76:24
135:7 142:20	63:21 69:19	277:24 279:4	77:3,8 109:16
152:22 161:25	71:8,11,14,17	301:21 328:8	109:22,22
162:15 173:24	71:18 74:4	328:13 341:17	115:3 134:24
174:16 189:15	87:22 92:3,16	344:22 346:3	135:19 143:17
192:25 199:23	94:15,20,24	347:8 399:8,11	147:14 163:4
206:21 223:18	96:14,22 97:12	402:14 404:13	163:18,19,20
224:6,11 247:9	97:17 110:11	taken 1:16 60:14	163:22 166:2
247:25 252:14	113:13 115:21	83:23,24 87:2	166:19,23
252:19 255:2	119:17 122:4	122:18 178:2	172:13 178:7
258:16 300:12	123:14 125:23	180:10 194:15	178:22 184:4
315:21 322:24	126:11 146:19	213:11 214:24	187:3 195:2
353:4 360:10	158:12 164:19	252:11 258:19	196:10,20
363:15 365:3	179:8 181:22	266:11 291:25	230:7 232:8
375:4 376:11	182:22 210:16	330:21 342:6	233:14 234:17
377:14 387:5	234:14 239:7	342:21,22	240:21 241:12
404:25 406:18	241:8,10,12,17	351:14 365:7	242:4 245:4,13
surmise 52:22	250:9 253:22	380:25 381:4	247:20 248:15
208:19	258:3 262:19	384:6 392:2	261:21,23
surprised 228:7	297:25 298:7	397:17	267:14 276:21
298:24	299:16 351:23	takes 372:4	279:7 283:9
surprises 371:25	367:9 368:25	talk 140:15	285:2 291:13
surprising 79:7	369:14 372:18	174:24 198:13	295:16 297:18
372:9	378:3 380:17	201:23 207:16	299:13 300:10
surreptitious	381:2 382:12	219:9 232:21	326:15 333:2
296:19	383:18 387:2	239:20	345:5 352:14
surrounding	swirl 105:11	talked 29:13	365:23 369:16
241:23	swoop 266:16	103:23 195:18	369:23
survey 118:21	sworn 6:7 409:7	273:16 276:6	teams 156:13
susman 140:9	411:8 412:22	277:10 372:17	260:15
157:25 158:8	system 11:8	talking 8:18	technical 56:4
158:13,25	148:20 180:2	62:11 80:21	57:10 81:25
159:9,9,22	263:2 370:14	91:18 95:11	82:5 260:14
161:14 163:21	382:19,20	107:5 128:7	299:11
164:14,15	390:17	129:11 132:7	telephone 233:21
165:2,3,5,9	systems 383:25	134:7 144:18	243:8
199:19 207:19		149:3 156:22	telephoned 226:7
207:23 208:3		160:15 161:2	telephones
215:5 218:17		163:19,23	370:24
287:8 386:2		164:4,21 172:6	television
387:18		187:24 199:13	349:19
	T		
	t 177:2 410:6		
	table 72:9		
	337:23 341:17		

tell 23:12 64:14 139:16,17 143:13,22 147:19 164:3,3 164:6 188:15 201:18 206:8 206:25 260:13 292:8 302:19	testimony 7:3 8:24 120:23 272:4 294:14 393:9 395:11 399:3,13 400:9 400:22 411:7 411:10	330:17 342:18 347:24 353:18 378:8 392:2 393:13 395:8 396:15,15 399:6 400:6,21 403:16,17 407:21 408:20	361:16 364:24 387:25 388:23 390:21
telling 175:24 188:4	testing 78:4	theoretically 70:4	think 18:7 29:9 29:12,25 30:2 32:22 33:18 34:25 35:2 37:5 40:9 45:3 47:25 49:14,17 50:20 51:20,22 64:4 68:17 72:13 76:7 90:25 92:11 96:7 99:3 104:16 107:16 112:22 121:8 124:19 130:10 130:12 132:15 134:10,25 150:22 151:8 155:16 163:23 164:10,11 165:5,22 168:13 169:24 173:16 174:22 175:22 185:2 187:20 190:14 190:20 192:21 193:13,14 197:22 198:10 198:14 199:21 200:23 207:10 211:6,18,23 213:24 214:7,8 216:13 217:15 217:18 218:18 218:19 226:10 226:21 227:19 228:13 229:25 231:14,23 232:18 235:2 238:14 239:15 239:16,17 240:7 242:7,14 245:21 248:6 248:24 250:16 254:5,16 255:8 256:10,13,15 256:17,19 257:19 259:18 267:5 268:24 270:15 271:22 274:5 275:12 276:7,9 282:8 285:4 286:5,21
temporarily 319:19	tests 78:15,16	theory 350:23	
ten 63:8 109:3 191:24	texaco 41:4 98:25 100:15 307:19 312:22 318:17 319:2 325:8 331:22 353:10 359:3 410:16	theyve 285:12 thicker 371:5 thing 10:24 37:11 79:3,4 95:17,17 111:25 118:9 121:22 144:21 165:21,25 166:6 173:2,4 173:22 174:10 185:17 189:22 190:25 210:6 210:15 218:2 226:18 234:21 237:12,13 238:24 261:18 277:3 295:10 337:22 342:18 367:4 368:3 372:6 400:3 404:14	
tentative 232:16	texacoecuador 48:8 380:12	things 33:17 42:6 51:6 65:25 69:4 76:11 81:3 99:13 107:5 122:14 143:19 170:22 171:3,9 171:17 173:5 174:12 177:11 179:15 186:10 191:15 206:15 212:17,22 213:21 227:3 229:15 233:4 239:2 243:18 244:7 246:2 256:15 257:12 268:17 274:8 280:11 282:6 286:21 295:21 299:9,11 324:15 325:23 343:8 353:2	
term 65:3 162:2 229:25 235:12 235:16 336:21 343:21	text 371:9		
terminated 256:22 291:21 292:20 363:23	thank 7:21 45:9 67:13,18 89:3 89:21 253:11 297:16 320:18 389:10 392:4 408:21,22,23 408:24		
terminating 357:20	thanks 88:25		
termination 359:20 390:23	thats 10:23 13:8 24:21 29:6 37:11 38:2 57:18 58:18,19 64:16 67:10 69:6 85:6 86:9 86:16 94:23 96:25 107:24 107:25 108:5 115:5 120:13 121:11 128:13 128:15,16 129:3 141:22 144:12,13 149:5 150:17 152:25 153:24 154:25 155:2 181:15 194:7 195:7 200:23 220:13 225:12 236:19 242:13 242:13,19 260:23 264:11 272:9 291:23 293:3 311:3,4 312:6,11 320:9 321:25 324:3,5 326:20 328:8		
terms 8:17 65:12 72:16 81:4 86:8 98:7 118:12 119:11 174:10 196:3 209:17 213:25 231:14 245:11 268:15 286:15 286:17 294:2 337:10 341:9 354:19 362:18 383:18 401:18			
territory 407:17			
test 79:6			
testified 6:7 147:22 156:19 258:7 285:17 294:10 296:2 341:2 368:22 379:7 387:4 391:11 392:25			
testifies 295:13			
testify 158:4 403:7			
testifying 205:11 388:15 395:23			
testimonial 395:17 399:2			

287:15,22	thoughts 243:5	106:17 107:10	270:8,13,20
291:4,25	350:7	107:14 108:20	271:15 272:20
293:24 295:9	threatened 403:6	111:8 115:11	274:9 275:25
295:25 296:13	three 23:7,10,17	115:25 117:14	280:5 281:12
297:10 298:12	28:25 32:2	123:14 124:5,8	281:16,19
299:7 300:6	93:18 109:8	125:4,4,11,11	282:15 284:25
307:12 308:5,6	129:19 130:9	125:25 126:2	285:20,23
308:16 309:19	140:8 177:7	126:23 127:9	287:4 289:15
311:24 312:8	212:2,7,9,11	127:16 129:17	289:16 290:22
312:11,12	217:11 220:25	130:10,25	294:11 295:5
315:19,20	222:4,22	131:15 132:12	298:23 303:14
327:19 328:15	228:11 235:13	133:2 134:19	305:25 307:19
329:3,17,18	236:18 242:11	135:6,7 136:10	308:20 312:19
334:10 337:9	242:17 243:8	138:10 139:15	314:17 315:2
347:12 352:16	244:25 263:5	139:18,19	318:15 320:8
353:5 365:11	266:19 319:8	140:12 141:19	324:22 327:17
367:2 373:15	362:19 399:25	142:5,24 143:8	328:14,16
377:20 384:21	400:3 404:13	146:20 147:22	329:21 330:2,6
385:13 386:3	threepage 203:18	156:15,17	330:20,23
386:14 387:10	threestory 62:9	157:13 158:9	332:4 334:24
388:5 390:16	threeway 243:2	158:16 160:10	335:2 337:8
391:2 396:3,4	threw 44:3	161:9 162:14	338:10 341:9
399:7,10	164:10	162:23 163:22	341:23 344:10
400:24 402:14	throwing 239:24	166:15 168:6	344:18 349:19
403:2 406:11	364:21	170:8,12 171:7	349:20 350:7,7
407:16	tied 314:2	171:20 173:24	353:6 354:22
thinking 107:15	ties 365:17	174:5,8 175:5	357:7,10,12
193:2 226:2	tim 127:24	175:23 176:11	358:9 360:12
278:24 310:20	133:18	177:6 178:25	360:21 365:6
thinks 132:17	time 4:13,24	182:20 186:9	365:16 366:3
thinner 371:7	5:23 14:12	186:20 189:11	368:17 370:4
third 29:15	20:3,15,24	189:11 190:5	370:20 371:19
35:21 62:20	21:5 23:2	191:2,19	372:3,4,10,24
88:2 129:16	27:22,23,24	192:14 198:12	375:23 376:15
131:7 141:15	29:9 30:7,24	198:16,17	378:10 382:2
222:17 223:8	31:3 32:8,23	200:5,12 205:7	383:13 384:2
227:23 249:2	32:23 33:25	207:14,25	385:14 386:17
263:10,23	37:11,16 39:19	209:3 210:20	388:13 393:8
315:16 381:7	40:14 42:14,24	212:22,25	393:23,23
thirdparty 6:2	44:12,14,18	214:25 216:2	397:6 398:23
69:16	45:10 46:19,23	217:22 223:21	398:23,24
thought 45:4	48:24 49:12	224:13,16	406:8 407:9
79:11 105:12	51:23 52:22	225:2 227:18	409:2,4
105:14 107:16	53:3,22 54:9	228:2,14	timebased 190:18
148:15 172:9	56:19 57:7,13	231:10 232:8	times 10:21
178:4,5 179:24	60:4,15 63:12	233:8 235:20	20:19 38:12
183:8 185:14	66:9 68:13	238:21 239:8	65:4,8,8 66:2
191:16 212:8	76:5 77:20	240:18 244:6	79:23 109:8,12
237:20 239:2	79:9 80:7,11	244:25 245:22	109:13 110:10
255:11 269:25	82:20,25 85:10	247:23 248:22	217:11 235:13
272:25 287:21	85:20 86:25	254:25 255:14	261:6 290:12
328:10 336:14	87:4,21 93:2,7	258:18,21	385:18 394:7
337:21 341:17	93:8,11,19,20	261:6 265:25	timing 129:18
357:9 363:25	94:6 95:22	266:13,16,24	133:21 218:9
371:25 401:15	96:21 100:9	268:17,18	337:10

titles 110:10	trade 177:21,24	274:4 296:6	34:2 163:17
today 4:13 5:22	179:13,17,19	transpiring	231:9 237:6,9
6:20 7:3 8:24	179:23 180:14	232:11	239:10 240:8,8
9:3 13:16	180:18	transposed	240:14 245:9
51:14 52:16	traffic 163:13	309:16	245:10 273:18
66:23 86:12	train 165:15	travel 38:12	278:2 334:19
111:24 288:18	training 38:22	370:10	337:15 342:10
293:23 302:19	39:3 110:21	traveled 36:25	343:20 347:3,7
318:13 370:8	trajectory	43:6 54:15	365:23 366:15
392:23 394:21	175:14	treasurer 110:23	turn 4:6 41:22
395:8 398:23	transcript 65:14	treat 216:24	212:9 223:7
407:14	323:13 327:15	treated 206:21	288:24 305:5
todd 1:19 5:3	328:13,21	treaties 178:4	325:5
411:4,20	330:11 338:12	treatment 121:21	turns 329:7,8
told 77:20,20	381:9 410:13	treaty 32:15	twelve 109:4
115:14 121:7	411:9	180:9	two 23:17 28:19
162:18 170:7	transfer 125:24	trial 21:5 43:25	28:25 29:18
195:8 252:24	372:19 373:3	44:13 70:16	30:12 32:2
253:4,6 297:4	373:22	263:2,7 280:24	48:20 50:8,15
297:15 341:11	transferring	362:5 396:25	51:20 54:7
361:20 378:21	369:2	397:25 402:2,4	57:15 62:9
378:22,24	transfers 373:24	403:13,14	73:17 75:3
391:6 400:24	375:6	404:5	84:8,11 87:5
408:14	transition 166:9	tribal 58:22	92:5 93:18
tolling 384:19	transitioned	125:16	97:7 112:13
384:24	361:22 362:22	tribes 59:18	117:23 143:22
tone 186:4	transitioning	trickling 271:16	173:9 192:2
top 214:2 236:10	361:25	tried 66:10	203:20,22
318:23 352:4	translate 224:10	256:20 350:15	212:4,10 213:5
topic 142:18	translated 17:3	trips 43:8,10,10	217:17 220:10
157:18 307:4	133:4,8 138:3	true 11:3,10	224:11,19
326:12 366:2,7	138:6 149:16	294:15 411:9	226:22,22
topics 405:23	151:3 154:3	trujillo 242:15	227:2 231:2
407:3,24,25	271:24 272:7	242:15 243:2,4	236:17 240:4
408:10	309:12	247:5,14,19	242:17 243:2,8
tort 15:10,18	translating	250:10,23	244:13,25
tortfeasors	132:25	253:23 256:4	248:19,24
313:25 316:21	translation	276:15	256:16,25
torts 385:8	16:22 22:22,25	trust 166:4	323:15 324:2
total 190:21,22	118:4 138:8	170:9,11 171:9	356:8 371:10
275:6 323:3	149:18 223:22	174:11 176:5	385:14 393:17
367:23 394:23	224:9,12	289:18	395:10 404:13
totaling 63:23	270:18,24	trusted 196:22	406:11
totality 194:4	271:11,19,24	289:17	twominute 389:9
totals 65:13	272:15,17	truthful 8:24	type 52:24 55:3
tough 257:23	309:11,14,17	379:20	60:13 121:10
tours 281:3	309:20 353:18	try 44:23 78:24	216:12 255:7
tower 3:5	359:11,24	114:23 151:7	255:19 380:4
toxic 15:18	translations	163:8 166:10	382:22
toxico 68:12,14	17:5,9,10	167:2,3 238:13	types 124:16
69:9,9,12,12	270:9,11	242:4 243:15	390:9
69:21	translator 144:4	278:11 292:21	typewritten 96:3
track 213:20	transmitted	335:5 344:22	typical 34:23
239:5 302:4	273:21	347:4 366:18	
304:4	transparent	trying 21:20	

U

u 19:22,24 20:2	107:24 115:5,9	74:6,22 76:17	unprofessional
20:12 26:20	117:8 126:14	104:3,4 109:19	246:8
27:14 45:13	132:22 135:2	110:14,16	unseal 320:10
53:24 79:8	237:10 257:21	111:9 115:11	unsealed 348:17
109:10,23	264:25 265:14	117:10 118:24	unstricken
117:24 136:7	265:22 266:14	122:16 124:25	259:18
177:21 179:13	266:17,25	125:6,8,13,20	updated 47:19
179:16 180:3	271:9 272:4	137:11 151:24	217:19
180:17,17	273:5 296:10	152:13 178:9	updating 68:7
183:3 185:11	296:13 299:2	179:21 180:19	upheld 106:22
211:21 212:8	308:2 315:11	183:9 189:17	upper 49:15
212:11,15	322:24 323:11	193:17,19	urging 90:17
232:9 242:2	334:11 335:8	209:23 230:9	use 10:21 12:23
254:24 281:9	336:12 340:21	236:13 262:14	57:20 64:3
303:21 314:17	356:20 358:15	262:25 264:3	88:9 95:5
317:11 339:22	363:7 366:15	264:12,23,24	233:7 235:12
344:24 345:12	375:24 377:16	265:12 266:2	256:12 392:19
346:6,8	378:8 401:7,25	267:20 273:22	394:3 396:10
uh 339:21	402:5,17 405:3	274:23 278:7	396:14,24,25
uhuh 73:22	406:24	280:11,22,24	useless 254:8
262:22 373:2	understandable	296:20 311:6	uses 374:8 397:7
ultimately 92:14	281:14	313:6 318:16	usually 173:6
139:10 155:17	understanding	318:19,21	235:7
207:6 250:10	7:7 26:19 27:4	335:10 340:4	utter 246:7,20
267:18,19	42:11,13 50:7	362:12,20	286:8
313:21 326:5	55:13 59:13	363:2,22	
332:5 378:20	69:13 74:14	364:25 365:10	
umbrella 58:21	93:21 97:24	378:18 408:4	
59:15,18	100:2,12 101:3	408:14	
umea 75:4	101:8 104:22	undertake 282:23	
unavailable	108:3,5 111:5	undertook 192:24	
232:19	126:4,8 136:16	underwriting	
unaware 46:3	137:3 139:12	72:17	
260:17	143:24 151:17	undocumented	
unbeknownst	177:22 181:15	225:17,23	
171:15	202:17 205:6	undoubtedly	
uncertainty	262:10,23	318:10	
345:6	263:21 264:7	unduly 277:17	
unclear 49:10	266:4,15 267:7	unethical 198:24	
333:23	271:6 273:7	199:3	
unconcerned	275:9 280:8	unexpected	
200:21	296:3 299:19	122:15	
uncooperative	309:13 340:13	unfolded 356:12	
256:10	340:23,25	unique 353:24	
uncovering	341:4 357:9	united 1:2 4:20	
136:11	362:2 365:12	76:12 109:6	
underlying 36:16	365:18 369:21	139:12 212:3	
381:7	378:13 396:16	305:20 318:11	
underneath 58:7	396:23	333:15 337:6	
understand 16:13	understandings	342:16	
21:19 27:3	105:18 147:2	university 14:3	
34:2 58:10	understood 21:24	14:6 75:5	
65:3 68:4	39:21 43:24	unpaid 168:6	
72:21 81:3,7	58:20 60:11,20	unprivileged	
91:18 96:5	61:8,24 62:3	374:2	

v

v 412:4
vague 78:21
106:15 107:2
220:4 359:17
375:20 379:16
value 119:13
355:17
vanity 339:18
365:13
varied 349:13
various 27:16
37:2 58:22
65:3 110:10
111:11 189:16
211:2 248:16
261:6 349:25
384:20
vega 25:22 26:2
veiga 112:14
319:3,6,11
325:4,15 326:7
326:17 327:6
328:3 331:18
332:5,13 335:7
335:9,15
336:11 347:22
vein 379:6
vendor 83:2

272:16
vendors 12:21
verba 220:12
 221:8
verbatim 295:17
 295:22
verdict 366:22
 367:23
veritext 4:12
 5:4 412:1
versa 374:6
version 112:9
 223:25 270:5
 275:11,23
 310:5,6,7,10
 324:13 353:13
 353:18 374:11
versions 309:5
versus 4:18
 74:12 274:21
vetting 260:9
vice 374:6
victims 185:13
 359:3 410:16
videographer
 3:14 4:2 86:24
 87:3 176:10
 177:5 258:17
 258:20 303:17
 329:23 330:3
 330:19,22
 368:20 408:25
videotaped 1:15
view 86:7 116:6
 123:16 161:11
 180:20 184:19
 196:11 202:19
 254:5 285:18
 286:17 391:20
viewed 44:4,9
 60:22 92:12
 123:22 147:9
 171:13 211:25
 301:20,22
 302:6 317:6
villanova 14:6
violated 180:23
violation 180:9
 180:22
violations 385:9
virtually 93:22
virtue 123:23
visit 23:21
 25:23 63:13
 68:16,19 77:5

visits 23:10,17
visualize 274:6
viva 61:19,25
 64:2,2 65:5
 110:15,17
 114:8,25 115:8
 115:16 116:13
 116:18,20
 117:19 119:12
 125:20,25
 126:5,12,14
 227:11 368:10
 368:24 369:22
 371:18,21
 372:16
vivas 115:21
vocal 353:2
voiced 135:14
 240:12 242:12
 286:5
volume 57:14
voluminous
 281:14
volunteer 44:5
 350:7
voss 3:7 6:2
 81:22 82:2,12
 82:17 83:9,15
 83:19 84:2,8
 84:22 89:6
 90:16 310:9,13
 402:10 404:18
 405:23 406:15
 408:3

W

wait 156:20
 191:22 371:2
 386:7,8,13
waive 18:15
waived 399:5
waiver 18:18
 304:25 305:14
 305:15 311:2
 311:16 312:19
 323:4 394:23
 395:16,18
 397:23
walk 10:15
walked 34:21
 165:12
walking 62:19
 143:9
wandering 285:14
want 121:18

140:17 143:15
 159:24 160:4
 164:3 165:25
 177:10 183:12
 185:20 201:23
 217:7,13
 244:19 251:6
 253:6,15 256:7
 257:18 259:11
 276:16 302:3
 315:19 321:3
 328:17 338:8
 346:20 374:16
 392:6 393:25
 394:10 400:7
 401:5,18
 404:24
wanted 6:19
 56:20 85:3
 121:17 143:14
 153:10,10
 187:21 216:23
 243:3 256:13
 278:11 331:3
 344:14 367:2,4
 406:25
wants 237:13
warning 389:9
washington 25:8
 31:23 42:14
 171:23 177:20
 186:2 193:7
 202:10 349:15
 391:13
wasnt 95:14
 115:25 117:24
 131:23,24
 172:10 250:24
 265:6 269:5
 281:17 319:25
 327:24 334:12
 336:6,7 408:7
 408:8
watch 69:15
 298:19 299:18
 300:8,17,23
 302:14,18,20
 302:25 303:6
 303:20 352:17
 395:23
watchs 297:17
 298:2,8
water 387:9
waving 131:24
way 9:20 25:3

33:4 40:22
 41:17 46:17
 51:15 59:9,10
 62:21 76:17
 79:2 85:11
 103:11 104:2
 107:24,25
 116:10 120:14
 124:22 131:17
 131:17,20
 133:15 134:9
 134:25 139:24
 145:4 154:25
 155:2 165:14
 165:14,15
 171:6 174:13
 185:2 187:14
 199:12 214:10
 217:4 221:21
 254:7,16
 272:15 278:3
 288:3 289:7
 292:10 296:6
 296:19,19
 301:22 302:7,9
 312:12,15
 315:24 325:9
 325:15 328:14
 331:11 332:6
 333:22 335:21
 339:8,9 352:11
 358:22 360:13
 363:24 385:16
 401:24 403:8
 404:2 408:13
 411:14
wayne 186:16
ways 74:16
 382:21
website 68:7,10
 68:22 69:25
 70:7,11 82:25
websites 69:7
wedding 54:21
week 226:22
 233:25 234:9
 236:18 406:6
weeks 38:14
 140:8 226:22
 256:16 337:12
welcome 89:2
wells 3:14 4:11
went 61:6 87:12
 111:25 146:15
 165:9,14

172:11 387:4
 398:17
west 3:5
westfield 2:14
weve 334:19
 347:3
whats 128:7
 143:12 170:6
 192:21 233:22
 246:7 279:4
 379:25
whatsoever 77:2
wheel 76:14
whereof 411:16
wherewithal
 288:14
whispering 4:5
willie 173:11,20
 196:9
willing 278:15
 407:2 408:11
wilson 372:25
 374:22 375:15
win 206:16
 400:21
winston 27:18,20
 27:22 28:4,16
 31:18,22 35:21
 36:10,15
 239:16,20
 241:13
winter 18:6
 278:23
wire 373:21
withdraw 44:23
 141:24 166:7
 223:6 287:10
 287:21 292:7
 345:24 346:2
 346:19 359:13
withdrawal 47:8
 65:21 170:3
withdrawing
 136:5 147:4
 166:16 287:19
 310:17,18,21
 363:18
withdrawn 162:19
 167:11,12
 169:16 384:24
 387:3
withdrew 45:6,8
 47:6 179:8
 181:18 183:21
 192:7 209:5

250:15 353:6
 403:5
withhold 289:4
withholding
 219:15,21
witness 3:6 4:22
 5:5 6:6 19:19
 45:7 47:3,9,15
 47:22 48:4
 60:20 61:3,5
 61:11,21 63:14
 64:22 65:2,24
 70:13 81:12
 111:15,21
 112:5,15 127:5
 140:18 146:8
 149:8 150:2
 157:5 158:2,7
 160:4 165:2
 193:9 203:17
 204:11 219:24
 220:2,19,22
 221:6,11,17,25
 251:15,18,21
 251:24 252:4,9
 252:13,19
 253:3,8 271:13
 271:21 272:9
 272:13 283:25
 294:19,25
 303:11 304:23
 306:14 308:7,8
 311:11,19
 315:19 316:20
 319:22 320:24
 325:21 326:22
 326:23 327:7
 327:12 328:22
 330:7,8 331:2
 338:12,17
 339:3 348:4,9
 348:13,16,25
 368:9 380:8
 385:12 391:18
 392:12,13,15
 395:23 397:9
 398:25 399:3
 400:9 401:24
 402:2 404:4,19
 405:10 408:22
 410:3 411:7,11
 411:16
witnesses 259:13
woman 28:13
 118:25

won 202:23,24
 203:2,3 249:11
 400:20
wonderful 227:6
wondering 160:21
 321:18 394:14
 401:4
wont 387:25
woods 232:2
 245:22 350:10
 352:24 367:16
word 127:4 210:5
 210:5 278:12
 278:15 356:8
words 13:4 45:3
 45:5 78:6
 122:8 126:6
 201:17 249:18
 287:22 334:22
 347:19 389:23
 389:24
work 5:22 8:6
 42:16 46:22
 53:15,25 55:4
 55:6 57:14
 72:15,23 74:21
 75:18 76:10
 77:23 92:2
 98:6 111:6,7
 119:13 124:25
 128:18,22
 148:24 166:4
 184:10 209:9
 237:9,15
 251:11 261:23
 261:25 262:4,5
 262:9 265:20
 265:21 266:3,6
 266:8,9,21
 267:2,10,13,16
 268:4,9,13
 274:17 279:24
 280:25 281:2
 281:17 290:23
 294:4 331:25
 350:4 364:11
 365:23 366:19
 388:24
worked 12:21
 14:10 24:25
 26:16 42:14
 46:11 53:12
 58:23 116:10
 159:13 161:11
 183:25 186:19

193:11 195:24
 206:19 209:11
 209:12 298:23
 319:2 335:18
 364:12
working 21:2
 36:25 37:17
 42:18 58:2
 61:17 72:22
 74:18 93:22
 121:19 163:20
 177:13 178:22
 179:5,7 180:11
 186:11 188:23
 192:22 209:25
 230:15 264:15
 266:22 289:10
 291:20 326:15
 335:5 347:6
 357:10 364:23
 370:20 390:18
 405:13
workplan 261:20
works 349:14
 396:15
woud 336:7
wouldnt 52:21
 75:12 170:21
 194:14 248:23
 294:6 302:16
 390:19
wrapup 34:24
wray 22:5,8
 70:17,20 71:2
 80:17,20,23
 97:21,21 98:6
 98:13 99:8,9
 99:18,23
 100:13 101:10
 102:8 103:5,9
 103:11 106:8
 106:13 107:20
 107:21 118:14
 263:3 321:9
 361:22 363:3
 363:10,14,22
 370:7
wrays 70:18
 118:25 362:2,3
 363:15 370:5
writ 384:22
 385:7
write 18:20 42:3
 226:9
writing 42:18

47:7 118:2
 264:20 265:17
 265:24 269:8
 273:9 408:17
 408:19
written 45:19,23
 99:7 148:16
 150:17 157:13
 202:16 227:2
 255:4 267:23
 291:13 296:11
 296:12 299:23
wrong 30:6 34:14
 58:6 183:18
 221:7 244:21
 400:2
wrote 181:16
 183:13 224:16
 272:6 277:6
 343:15,22

x

x 1:5,11 119:23
 122:11 370:14
 410:2,6

y

y 370:14
yanza 24:8,17
 25:11 47:16
 101:10 108:22
 108:22,25
 109:11 110:12
 110:16,19
 111:20,22
 113:3,7,14,17
 113:25 114:8
 114:15 117:20
 118:3,6 119:18
 120:9,17,24
 121:3 122:6,25
 123:6,16 124:6
 124:13 126:9
 132:4 136:6
 137:22 138:5
 139:9 142:4,18
 147:12 148:2,8
 148:13 156:6
 157:17 174:15
 175:3 195:3,10
 222:6,11,18
 223:11 227:5
 284:12 287:6
 293:4,15 369:9
 375:11

yanzas 60:19
 109:15 119:11
 226:4
yeah 6:18 30:10
 57:16 117:14
 123:22 130:19
 172:22 192:11
 192:20 224:3
 243:24 246:6
 259:4 269:24
 274:5 285:3
 306:15 342:25
 344:12
year 18:13 19:4
 19:17 92:18
 119:25 190:20
 192:2 227:25
 228:8,12
 276:15 290:13
years 22:17
 57:15 119:24
 186:23 191:24
 213:6 220:10
 220:25 238:2
 252:7 261:10
 262:6 277:10
 334:12,18
 337:18 347:2,7
 385:14
yesterday 394:6
 394:25 395:15
 397:4 398:15
 398:24 401:4
york 1:3,19,19
 1:21 2:4,4
 4:12,17,17,21
 21:9,11 23:19
 37:22,22 39:19
 39:23,24,25
 42:23 54:21
 93:10 98:7,23
 100:7,14
 101:14,18,23
 107:17 136:17
 139:19 140:10
 158:8 212:4
 314:20 316:24
 411:5 412:2,2
young 364:20
 365:4
youre 89:2
 230:24
youve 149:25
 170:14 381:21

z

z 370:15
zero 336:10

0

00 338:13 410:13
000 56:24 63:24
 64:7 73:4,12
 73:19 92:18
 95:23 96:23,23
 117:8,9 120:2
 120:25 121:4
 122:5 123:7
 225:6 226:11
 256:13 378:2,3
001215208 368:19
01 258:18
03 60:5 92:19
04 57:15 92:19
 92:20
05 57:15 80:15
 92:19,20
06 57:17 80:15
 92:20 174:17
 410:12
069 4:22
0691 1:4
07 25:14 49:18
 54:23 57:17
 61:6 129:17
 130:8,11,13,13
 131:10 174:17
 179:2 213:2
 261:7 267:4
 278:6
07090 2:14
08 33:10 57:17
 170:16 229:20
 231:11 277:25
 278:2,23
 279:22,23
 280:7 283:5
0809 35:17
09 33:10 47:11
 49:17,19,21,25
 50:19 95:22
 97:9 130:24
 135:7 146:25
 170:16,16,17
 179:9 189:12
 199:21 213:8
 214:23 218:13
 221:20 227:15
 229:21 231:11

231:17,18,24
 236:8,8 237:5
 237:6 238:25
 245:8 249:17
 279:21 281:25
 285:5 286:4
 353:6

1

1 8:8 177:3,6
 225:4,4,5
10 86:25 104:11
 120:2 355:17
 356:5
100 21:21 73:19
 101:6 129:23
 224:6 389:3
10001 412:2
10166 2:4
10th 222:11
 359:4
11 1:4 4:22 87:4
 94:21 294:21
 295:3
111 2:13
12 96:13 120:25
 121:4 122:5
 123:7 176:11
 176:12 190:24
 190:24 330:16
1250 412:2
12th 49:24
 376:16
13 1:12 4:14
 222:16 329:23
 410:8
135246 81:17
140 410:10
14092 353:12
148 94:21
149 410:10
15 222:20 223:7
 244:13 398:14
 402:18
150 67:16 92:18
1500 3:4
15th 7:24 90:9
 90:10,13,14,25
16 237:25 269:17
 269:21 275:13
 283:7
1629 222:2,23
 227:24 240:17
 283:19 288:21
17 190:21

17000 338:13
 1782 87:13 136:9
 147:8 153:3
 162:4,21
 170:19 171:5
 214:5,6,17
 215:23 288:2
 322:13,15
 385:14 386:19
 395:18
 17th 87:18
 18 17:18 107:4
 116:4 190:20
 240:16 409:2,4
 1801 2:8
 19 222:18 313:20
 191022100 3:5
 19107 8:9
 1957 7:24
 1969 14:19
 1973 316:17
 1979 14:3
 1982 14:8 252:9
 1990s 23:18 41:3
 1993 48:8 175:4
 316:19,20
 1996 305:11
 306:8
 1998 107:12
 19th 223:9
 224:15,21
 225:11
 1st 149:14
 150:12,18
 269:15 322:22

2

2 72:2 141:13
 162:8 197:16
 197:20 224:23
 289:22 305:15
 305:15 321:22
 410:12
 20 102:18 412:23
 200 1:18 2:3
 4:16
 2002 47:19
 2003 11:4,11
 15:25 16:20
 19:20 20:7,13
 20:22 21:2,13
 21:17,21 22:3
 26:21,22 27:6
 27:13 28:23
 41:12 42:10

43:5,14,19
 44:20 45:12,20
 45:24 46:10,24
 53:7 55:4 59:7
 97:22 98:20
 99:15 102:5
 104:4 109:17
 123:15 212:5
 315:4,12 316:2
 316:12,25
 317:14 318:16
 334:3 354:23
 200320042005
 80:11
 2004 56:23 58:2
 80:4 365:2
 2005 56:24 58:2
 63:22 64:7
 321:7 324:10
 324:23
 2006 47:19
 303:16 354:10
 357:15 358:3,9
 359:4,16
 361:23 363:8
 368:12
 20062007 212:25
 2007 23:15,16,21
 24:3,15 25:21
 29:9 34:16
 35:15 54:10,25
 63:15 120:25
 130:7 133:10
 134:20 158:17
 178:23 260:16
 261:2 262:20
 368:13 371:19
 371:21,24
 372:8,22
 373:11 374:20
 376:16
 2008 29:5,19
 31:14 151:14
 154:19 178:24
 197:8 269:16
 283:10 349:6
 2009 29:6,19
 31:15 44:21,21
 44:23 45:5,8
 45:12 47:7
 94:15,20 96:13
 104:17 130:22
 130:23 139:11
 140:11 158:18
 158:19,20

173:23 184:8
 192:6 197:8
 203:24 205:14
 210:21 211:14
 213:14 214:5
 219:14 220:11
 221:10 222:11
 222:18 223:9
 224:15,18,19
 225:11 226:6
 229:12 248:22
 255:15
 2010 18:6 44:20
 87:16 136:3
 137:3,17,19
 138:13 141:6
 142:5,10,17
 146:2,20
 147:11 149:14
 150:7,18 156:7
 157:16,25
 158:3,25
 167:21 207:20
 211:25 218:22
 222:5 224:7
 257:12 283:21
 284:3,4,8,15
 286:20 287:5
 288:22 289:22
 292:3 293:16
 386:3 387:18
 2011 19:13 82:21
 83:20 309:21
 322:4,22
 2012 19:13 82:19
 83:3 385:13
 2013 1:12 4:13
 9:9,10 19:5,9
 409:8 411:17
 412:4
 203 410:11
 20th 305:11
 21 329:5 330:12
 2122799424 412:3
 22 222:16,20
 223:7 240:16
 293:20
 2222 304:25
 305:6 314:12
 316:7
 2239 320:25
 322:20 324:9
 23 255:19 258:21
 23rd 322:3
 368:12

24 303:18
 246 410:11
 24th 91:2 368:12
 25 355:17 356:5
 25th 203:20
 348:20 349:6
 26949 222:19
 26th 203:20,24
 309:21
 27 283:7
 28 410:12
 28th 303:15
 29 394:19 398:4
 29th 141:6 142:9
 156:4 284:8

3

3 47:19 49:24
 51:12 73:4,12
 95:20 96:8
 225:10 256:13
 256:14 258:18
 258:21 321:22
 355:15
 30 177:3,6
 393:18,21
 397:6,6,14
 398:3,4
 300 67:4,6,15
 89:19 91:8
 303 410:12
 309 56:25 57:22
 31st 9:9 94:15
 94:20
 33 378:2
 335 63:24
 338 410:13
 34 368:21
 348 410:14
 350 67:7
 3524 294:19,24
 353 410:14
 359 410:15
 3607 16:17 17:8
 17:12 19:20
 22:22
 368 410:17
 37 176:11,12
 380 410:17
 3900 3:5
 3rd 150:6,13
 321:7 324:10
 324:23

4

4165:7 224:24 289:21 293:20 330:20,23 4064:7 397:6 400394:17 40019:6,11 410:8 400213:11,13,20 410:8 400347:4 48:2,6 48:11,19,21 51:20 63:16,18 67:19 72:2 89:24 91:17 94:14,19 96:18 96:20 97:8 217:16,17 410:9 4004140:19,22 140:25 141:20 142:7 410:10 4005149:9,10,24 150:6 154:3 155:13 410:10 4006203:18,25 204:13 207:4 410:11 4007246:23,25 247:3,18 410:11 4008303:12,22 410:12 4009338:14,15 410:13 4010348:22,23 349:3 350:14 410:14 4011353:8,15 354:3,6 356:14 410:14 4012358:25 359:5,7 410:15 4013368:6,10 369:5,10,13 410:17 4014380:9,14,16 382:11 410:17 40350:9,15 70:15 73:2 91:16 92:15 95:20 96:18 405410:5 4280204:10 4386:25 45250:14 330:20	45067:2 397:16 401:6 4821:13 24:5,8 99:16 102:7 123:18 136:21 410:9 <hr/> 5 538:11 117:8,9 119:25 165:8 190:24 226:11 275:4 5062:21 330:23 350:16 378:3 500256:14 50266:17,25 81:10 89:11 90:18 392:17 392:18 393:7 393:12,19,22 394:9 395:3 396:8,15,16,20 401:2 5310948:9,25 54330:4 55105:13 55097140:21 57794:16 <hr/> 6 61:12 275:5 402:15 409:2,4 410:4 412:4 60112:8 282:13 60foot62:21 6120749:16 62056:24 57:22 6595:23 96:23 6th4:13 9:7,10 87:16 <hr/> 7 753:16 222:16 225:3 294:20 70351:10 700225:6 71811228748:7 7594:16 7796:4,23 7th411:17 <hr/> 8 82:14 8020226422:9 83394:16	8621:12 100:16 100:18 8856:25,25 57:22 <hr/> 9 91:12 4:14 9:10 38:11 82:22 161:25 283:21 410:8 90s21:8 36:24 52:23 60:3 100:25 101:13 212:3 92010380:12 92082246:24 9232010380:11 9348:25 97294:21 99161:25 9th222:5 224:7 284:3,4,15 288:22 289:21
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